



New South Wales

# Local Government (General) Regulation 2021

under the

Local Government Act 1993

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Local Government Act 1993*.

SHELLEY HANCOCK, MP  
Minister for Local Government

## **Explanatory note**

The object of this Regulation is to remake, without substantive changes, the provisions of the *Local Government (General) Regulation 2005*.

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## Local Government (General) Regulation 2021

under the

Local Government Act 1993

### Part 1 Preliminary

#### 1 Name of Regulation

This Regulation is the *Local Government (General) Regulation 2021*.

#### 2 Commencement

This Regulation commences on 1 September 2021.

**Note.** This Regulation replaces the *Local Government (General) Regulation 2005*, which is repealed on 1 September 2021 by section 10(2) of the *Subordinate Legislation Act 1989*.

#### 3 Definitions

(1) In this Regulation—

**AS 5200.000—2006** means AS 5200.000—2006, *Technical specification for plumbing and drainage products, Part 000: Procedures for certification of plumbing and drainage products*, published by Standards Australia.

**building** includes a proposed building.

**Category 1 business activity** has the same meaning as in the Pricing and Costing Guidelines.

**Category 2 business activity** has the same meaning as in the Pricing and Costing Guidelines.

**environmentally sensitive area** includes—

- (a) land or an area listed in the definition of **environmentally sensitive area** in Part 4 of Schedule 3 to the *Environmental Planning and Assessment Regulation 2000*, and
- (b) any land or area—
  - (i) within 100 metres of a natural waterbody, wetland or coastal dune field, or
  - (ii) with a high watertable, or
  - (iii) with highly permeable soils or acid sulphate, sodic or saline soils, or
  - (iv) within a drinking water catchment, or
  - (v) within the water catchment area of an estuary where the entrance to the sea is intermittently open.

**house drain** means that part of the sewerage service that conveys (or is intended to convey) the discharges from soil pipes and waste pipes on premises.

**house service pipe** means such part of a water service pipe as is not a property service pipe.

**inspector** means an employee of the council who is an authorised person for the purposes of exercising the functions of an inspector under this Regulation.

**interceptor trap** or **boundary trap** means a trap for preventing the passage of air or gases from the sewer to the house drain, being a trap located at some point between the sewer and the lowest inlet of the house drain.

**licensed contractor**, in relation to carrying out water supply, sewerage or drainage work, means the holder of a contractor licence in force under the *Home Building Act 1989* that authorises the holder to carry out that work.

**Liquid Trade Waste Management Guidelines** means the Guidelines of that name produced by the Department of Planning, Industry and Environment in 2021, as in force from time to time.

**Local Aboriginal Land Council** means a Local Aboriginal Land Council constituted under the *Aboriginal Land Rights Act 1983*.

**New South Wales Aboriginal Land Council** means the New South Wales Aboriginal Land Council constituted under the *Aboriginal Land Rights Act 1983*.

**pan** means any moveable receptacle kept in a closet and used for the reception of human waste.

**penalty notice** means a notice served under section 679 of the Act.

**Plumbing Code of Australia** means the document entitled the *Plumbing Code of Australia*, produced for all State governments by the Australian Building Codes Board, as in force from time to time.

**Pricing and Costing Guidelines** means the document entitled *Pricing & Costing for Council Businesses—A Guide to Competitive Neutrality* originally issued by the Department of Local Government in July 1997, as in force from time to time.

**principles of competitive neutrality** has the same meaning as in the Pricing and Costing Guidelines.

**property service pipe** means such part of a water service pipe as lies between the service main and the water meter or, if there is no water meter, the boundary of the premises served by the service pipe.

**public sewer** means a sewer operated by a council or a county council, a water supply authority (within the meaning of the *Water Management Act 2000*), a State owned corporation specified in Schedule 1 or 5 to the *State Owned Corporations Act 1989* (or a subsidiary of such a corporation) or any other public or local authority.

**qualified supervisor**, in relation to the carrying out of water supply, sewerage or drainage work, means the holder of an endorsed contractor licence or supervisor certificate in force under the *Home Building Act 1989* authorising the holder to carry out or to supervise that work.

**related effluent application area**, in relation to a sewage management facility, means the area of land (if any)—

- (a) where it is intended to dispose of the effluent and any by-products of sewage from the facility, or
- (b) to which the effluent and by-products are intended to be applied.

**Secretary** means the Secretary of the Department of Planning, Industry and Environment.

**septic tank** means a fixed receptacle of watertight material used in connection with the storage or bacterial treatment of sewage.

**service main** means a water main or a sewer main.

**sewage** includes any effluent of the kind referred to in paragraph (a) of the definition of **waste** in the Dictionary to the Act.

**sewage management facility** means—

- (a) a human waste storage facility, or
- (b) a waste treatment device intended to process sewage,

and includes a drain connected to such a facility or device.

**sewage of a domestic nature** includes human faecal matter and urine and waste water associated with ordinary kitchen, laundry and ablution activities of a household, but does not include waste in or from a sewage management facility.

**sewer main** means a sewer main forming part of the council's sewerage system, and—

- (a) includes risers or junctions provided by the council to enable a sewerage service to be connected to the main, and
- (b) if the main is located outside premises that are to be served—includes risers and the sewers and fittings connecting the main to the premises, but only up to the boundary of the premises or, if a boundary trap or interceptor trap is installed, up to the trap.

**sewerage service**, in relation to premises—

- (a) means the pipes, fittings or fixtures used or intended to be used in connection with the premises for the purpose of conveying sewage or permitted discharges from the premises to the council's sewerage system, and
- (b) if a septic tank is installed on the premises and connects or is intended to connect (directly or indirectly) with the council's sewerage system—includes a septic tank (other than a septic tank intended to discharge to a related effluent application area), an effluent tank or a sullage tank.

**soil pipe** means any pipe that conveys the discharge from human waste storage facilities, or from operating theatres or morgues, to the house drains.

**the Act** means the *Local Government Act 1993*.

**trade waste** means all liquid waste other than sewage of a domestic nature.

**trap** means any fitting designed to retain a quantity of water to prevent the passage of air or gases through such fitting.

**waste pipe** means any pipe that conveys discharges to a house drain from fixtures (other than human waste storage facilities) or operating theatres or morgues.

**water main** means a water main forming part of the council's water supply system, and, if premises are or are to be connected to the main, includes water pipes and fittings connecting the main to the premises to the point within the premises at which the water meter is or is to be installed.

**water service pipe** means a pipe that connects premises to a water main.

**Note.** The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

- (4) Notes included in this Regulation do not form part of this Regulation.

#### 4 Application of Regulation

Except as elsewhere provided in this Regulation, this Regulation—

- (a) applies to those parts of the State that are constituted as areas for the purposes of the Act, and
- (b) applies to county councils in the same way as it applies to councils.

**Note.** The application of this Regulation to joint organisations is dealt with in section 397A.

## Part 2 Approvals

### Division 1 Preliminary

#### 5 Exclusion of certain matters

This Part does not apply to—

- (a) the installation of manufactured homes, moveable dwellings or associated structures on land, or
- (b) the operation of manufactured home estates, caravan parks or camping grounds.

**Note.** The operation of manufactured home estates and the installation of manufactured homes in manufactured home estates, and the operation of caravan parks and camping grounds and the installation of moveable dwellings (including manufactured homes) both in caravan parks and camping grounds and elsewhere, are governed by the *Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2021*.

### Division 3 Approvals relating to water supply, sewerage and stormwater drainage work

#### Subdivision 1 Applications for approvals

##### 13 Standards and requirements to be met for approval

The council must not approve an application for an approval allowing water supply, sewerage or stormwater drainage work to be carried out unless it is satisfied that the activity as proposed to be carried out will comply with any applicable standards set out or referred to in Part 2 of Schedule 1 and with any other applicable standards or requirements set out or referred to in this Regulation.

##### 14 Installation of water meters

A council may require an application for an approval relating to the installation of a water meter to be accompanied by a completed water meter identification form provided by the council for the purpose.

##### 15 Matters to be considered when determining applications for water supply, sewerage and stormwater drainage approvals

- (1) This section applies to the following activities—
  - (a) carrying out water supply work,
  - (b) drawing water from the council water supply or a standpipe,
  - (c) installing, altering, disconnecting or removing a water meter connected to a service pipe,
  - (d) carrying out sewerage work,
  - (e) carrying out stormwater drainage work.
- (2) In determining an application for the purposes of section 68 of the Act for an approval to do any of the activities to which this section applies, the council must have regard to the following considerations—
  - (a) the protection and promotion of public health,
  - (b) the protection of the environment,
  - (c) the safety of its employees,
  - (d) the safeguarding of its assets,

- (e) any other matter that it considers to be relevant in the circumstances.

## **Subdivision 2 Conditions of approvals**

### **16 Approvals for stormwater drainage work to be subject to a condition requiring compliance with standards and requirements**

It is a condition of an approval allowing stormwater drainage work that—

- (a) the activity approved, and
- (b) any building or work associated or carried out in connection with the activity, complies with any applicable standards set out or referred to in Part 2 of Schedule 1 and with any other applicable standards or requirements set out or referred to in this Regulation or any other regulation under the Act or the *Environmental Planning and Assessment Act 1979*.

### **16A Approvals for water supply or sewerage work subject to compliance with Plumbing and Drainage Act 2011, standards and requirements**

It is a condition of an approval allowing water supply or sewerage work that the activity approved, and any building or work associated or carried out in connection with the activity, complies with—

- (a) any applicable requirements of the *Plumbing and Drainage Act 2011* or the regulations made under that Act, and
- (b) any applicable standards or requirements set out or referred to in this Regulation or any other regulation under the Act or the *Environmental Planning and Assessment Act 1979*.

### **17 Discretionary conditions for carrying out water supply work**

The council may, in giving an approval to carry out water supply work, impose either or both of the following conditions—

- (a) a condition that requires the work to be carried out within such time as the council considers reasonable,
- (b) a condition that requires a qualified supervisor to attend at the place at which the work is carried out at such times as the council directs.

### **18 Connection to water or sewerage mains**

- (1) It is a condition of an approval for an activity that involves the connection of water service pipes or property service pipes to a water main or the connection of drains to a sewer main that the connection must—
  - (a) comply with any operating requirements notified by the council, and
  - (b) be carried out—
    - (i) by a person authorised by the council, or
    - (ii) by or under the control of a council officer.
- (2) The council may, as a condition of approving the connection to a water or sewer main, require that the connection must not be started unless at least 2 days' notice of intention to start the work has been given to the council.

### **19 Cutting into sewer main**

- (1) It is a condition of an approval for an activity that involves the cutting of a junction into a sewer main that the cutting of the junction must—
  - (a) comply with any operating requirements notified by the council, and

- (b) be carried out by a qualified supervisor acting under the supervision and in accordance with the directions of the council.
- (2) The council may, as a condition of an approval for a junction to be cut into a sewer main, direct that the work must not be started unless at least 2 days' notice of intention to start the work has been given to the council.
- (3) The council may, as a condition of an approval for a junction to be cut into a sewer main, require the work to be carried out by the council for a specified charge if the council has decided that the work should be carried out by the council.

**20 Person carrying out water supply, sewerage or stormwater drainage work to hold permit**

- (1) It is a condition of an approval referred to in item 1, 4, 5 or 6 of Part B of the Table to section 68 of the Act that a person must not begin carrying out the activity approved unless the person is the holder of a permit issued in accordance with the Plumbing Code of Australia.
- (2) This section does not apply in respect of any activity that is plumbing and drainage work within the meaning of the *Plumbing and Drainage Act 2011*.

**21 Inspection and certification of water supply, sewerage and stormwater drainage work**

An approval referred to in item 1, 4, 5 or 6 of Part B of the Table to section 68 of the Act is subject to the following conditions—

- (a) a person must not put into use a soil, waste or house drain pipe, or cover up or conceal from view an underground or enclosed water supply, sewerage or stormwater drainage work or put into use such a work, until the work has been inspected and certified—
  - (i) by the council or a suitably qualified person determined by the council, or
  - (ii) if the work is of a type for which the approval of the Minister for Water, Property and Housing is required under section 60 of the Act—in accordance with subparagraph (i) or, if that Minister has specifically authorised inspection and certification by another suitably qualified person, by that person,as having been constructed in accordance with the Act and this Regulation,
- (b) any such inspection and certification must be carried out in accordance with the Plumbing Code of Australia and the requirements of the council,
- (c) a person undertaking the construction of a water supply, sewerage or stormwater drainage work must provide every reasonable facility and all necessary information to enable inspection of the work for the purposes of paragraph (a),
- (d) in particular, such a person must, if required to do so by a person carrying out an inspection for the purposes of paragraph (a), produce the plan (if any) of the work for that person to look at,
- (e) a person carrying out water supply, sewerage or stormwater drainage work must immediately rectify to the satisfaction of the council any defect revealed by an inspection under paragraph (a).

**22 Defective water supply, sewerage or stormwater drainage work to be rectified**

- (1) It is a condition of an approval referred to in item 1, 4, 5 or 6 of Part B of the Table to section 68 of the Act that a licensed contractor who carries out the activity approved must, if ordered to do so by the council, rectify any defect in the work that

is due to faulty workmanship or defective material, but only if the council notifies the contractor of the defect after the date of issue by the contractor of a certificate to the effect that the work has been carried out as required by the Act and the *Environmental Planning and Assessment Act 1979*.

- (2) A licensed contractor so notified must bear the cost of rectifying the defect.
- (3) This section does not apply in respect of any activity that is plumbing and drainage work within the meaning of the *Plumbing and Drainage Act 2011*.

### **23 Diagrams of sewerage or stormwater drainage work**

- (1) It is a condition of an approval referred to in item 4 or 5 of Part B of the Table to section 68 of the Act that, if the activity approved is carried out on private premises, the person who carries out the activity must provide to the council a diagram of any drains installed in accordance with the approval.
- (2) Such a diagram must show—
  - (a) the level of the drains in relation to the sewer main junction and the finished ground level, and
  - (b) the distances from the drains to the nearest boundaries of, and buildings on, the premises.
- (3) This section does not apply in respect of any activity that is plumbing and drainage work within the meaning of the *Plumbing and Drainage Act 2011*.

## **Subdivision 3 Exemption**

### **24 Approval not required for the drawing of water by council employees**

An employee of a council acting in the course of his or her employment may draw water from a water supply system or standpipe without the prior approval of the council.

## **Division 4 Approvals relating to management of waste**

### **Subdivision 1 Applications for approvals**

#### **25 Matters to accompany applications relating to discharge into sewers**

An application for approval to discharge trade waste into a sewer under the control of a council or that connects with such a sewer must be accompanied by the information required by Table 1 to the Liquid Trade Waste Management Guidelines.

#### **26 Matters to accompany applications for approval to install or construct sewage management facilities**

- (1) An application for approval to install or construct a sewage management facility on any premises must be accompanied by the documents specified in this section.
- (2) **Plan**

The application must be accompanied by a plan, to scale, showing the location of—

  - (a) the sewage management facility proposed to be installed or constructed on the premises, and
  - (b) any related effluent application areas, and
  - (c) any buildings or facilities existing on, and any environmentally sensitive areas of, any land located within 100 metres of the sewage management facility or related effluent application areas, and



- (d) any related drainage lines or pipework (whether natural or constructed).
- (3) **Specifications**  
The application must be accompanied by full specifications of the sewage management facility proposed to be installed or constructed on the premises concerned.
- (4) **Site assessment**  
The application must be accompanied by details of the climate, geology, hydrogeology, topography, soil composition and vegetation of any related effluent application areas together with an assessment of the site in the light of those details.
- (5) **Statement**  
The application must be accompanied by a statement of—  
(a) the number of persons residing, or probable number of persons to reside, on the premises, and  
(b) such other factors as are relevant to the capacity of the proposed sewage management facility.
- (6) **Operation and maintenance**  
The application must be accompanied by details of—  
(a) the operation and maintenance requirements for the proposed sewage management facility, and  
(b) the proposed operation, maintenance and servicing arrangements intended to meet those requirements, and  
(c) the action to be taken in the event of a breakdown in, or other interference with, its operation.
- (7) This section does not apply to an application for approval to install or construct a sewage management facility on any premises if the applicant declares in the application that the facility will remain on the premises for no more than 12 months.  
**Note.** The information that is to accompany such applications (and applications for approval to *alter* a sewage management facility) is to be determined by the council in each particular case. Section 81 of the Act provides that an application for an approval under Part 1 of Chapter 7 of that Act (in which category such applications fall) must be accompanied by “such matters as may be prescribed by the regulations and such matters specified by the council as may be necessary to provide sufficient information to enable the council to determine the application”.

## Subdivision 2 Determination of applications for approvals

### 27 Matters to be taken into consideration by council in determining applications for approval to place a building waste storage container on a road

In determining an application for approval to place on a road a building waste storage container, the council is to take into consideration any requirements or guidelines relating to the location, size and visibility of building waste storage containers that are notified to the council from time to time by Transport for NSW.

### 28 Approval to discharge waste into sewers: concurrence required

A council must not grant an approval under section 68 of the Act to discharge trade waste (whether treated or not) into a sewer of the council unless the Secretary (or the Secretary's nominee) has concurred with the approval.

**Note.** Section 90(2) of the Act permits any person or authority whose concurrence is required before an approval may be granted to give the council notice that the concurrence may be assumed (with such qualifications or conditions as are specified in the notice).

**29 Matters to be taken into consideration in determining applications for approval to install, construct or alter sewage management facilities**

(1) In determining an application for approval to install, construct or alter a sewage management facility, the council must take into consideration the matters specified in this section.

(2) **Environment and health protection matters**

The council must consider whether the proposed sewage management facility (or the proposed sewage management facility as altered) and any related effluent application area will make appropriate provision for the following—

- (a) preventing the spread of disease by micro-organisms,
- (b) preventing the spread of foul odours,
- (c) preventing contamination of water,
- (d) preventing degradation of soil and vegetation,
- (e) discouraging insects and vermin,
- (f) ensuring that persons do not come into contact with untreated sewage or effluent (whether treated or not) in their ordinary activities on the premises concerned,
- (g) the re-use of resources (including nutrients, organic matter and water),
- (h) the minimisation of any adverse impacts on the amenity of the land on which it is installed or constructed and other land in the vicinity of that land.

(3) **Guidelines and directions**

The council must consider any matter specified in guidelines or directions issued by the Secretary in relation to the matters referred to in subsection (2).

**30 Standards to be met for approval**

The council must not grant an application for an approval to install, construct or alter a waste treatment device or sewage management facility unless it is satisfied that the activity as proposed to be carried out will comply with any applicable standards established by this Regulation or by or under the Act.

**Subdivision 3 Conditions of approvals**

**31 Compliance with standards**

(1) It is a condition of an approval referred to in item 4 of Part C of the Table to section 68 of the Act (Dispose of waste into a sewer of the council) that—

- (a) the activity approved, and
- (b) any building or work associated or carried out in connection with the activity, complies with any applicable standards established by any regulation in force under the Act or the *Environmental Planning and Assessment Act 1979*.

(2) It is a condition of an approval referred to in item 5 of Part C of the Table to section 68 of the Act (Install, construct or alter a waste treatment device or a human waste storage facility or a drain connected to any such device or facility) that—

- (a) the activity approved, and
- (b) any building or work associated or carried out in connection with the activity, complies with any applicable standards established by this Regulation or by or under the Act.

### **32 Disposal of trade waste**

- (1) An approval to dispose of trade waste into a sewer of the council is subject to such conditions (if any) as the council specifies in the approval.
- (2) In imposing any such conditions, the council is to have regard to the matter set out in Table 5 to the Liquid Trade Waste Management Guidelines.

### **33 Waste treatment devices**

- (1) It is a condition of an approval to install, construct or alter a mechanical device that treats waste by compaction, shredding or other means that this section is complied with.
- (2) An occupier of premises on which waste is deposited must comply with any directions given by the council from time to time as to the use of the device.
- (3) The waste treatment device and any part of the premises on which it is situated that is used in connection with the device must be maintained in a sanitary condition.

### **34 Use of sewage management facilities**

It is a condition of an approval to install, construct or alter a sewage management facility that the facility is not used (or used as altered) until the council has given the applicant for approval notice in writing that it is satisfied that the facility has been installed, constructed or altered in substantial accordance with the approval.

### **35 Position of closets**

The council may, as a condition of an approval to install, construct or alter a human waste storage facility, require the alteration of its design and proposed position, having regard to its effect on the amenity of the locality.

## **Subdivision 4 Performance standards**

### **36 Sewage management facilities generally**

A sewage management facility—

- (a) must be made of durable and non-corrosive components, each having an expected service life of at least—
  - (i) 5 years, in the case of a mechanical or electrical component, and
  - (ii) 15 years, in any other case, and
- (b) must be installed or constructed—
  - (i) in accordance with the appropriate specifications and in accordance with good trade practice, and
  - (ii) so as to allow ease of access for maintenance, and
  - (iii) with regard to the health and safety of users, operators and persons maintaining the facility, and
- (c) must be installed or constructed so as to make appropriate provision for access to and removal of contents in a safe and sanitary manner, and
- (d) must, if it is intended to be a permanent fixture, be anchored to prevent movement.

### **37 Closets for certain toilet systems**

- (1) A human waste storage facility must not be installed in any part of a building unless that part of the building complies with the following requirements—
  - (a) it is adequately ventilated to the outside air,

- (b) the walls and roof are of weatherproof material,
  - (c) the floor is of material that is impervious to water and is drained.
- (2) The part of the building in which a human waste storage facility (other than a water closet) is permanently installed must be designed and located so as to allow human waste to be removed without being carried through any dwelling-house or public building or any building in which any person may be, or may be intended to be, employed in any manufacture, trade or business.

### **38 Cesspits**

- (1) A cesspit—
- (a) must be deep, dark and fly-proof, and
  - (b) must be constructed and maintained so as to prevent both the access of surface waters to it and the escape of matter from it, and
  - (c) must not be located where it can possibly pollute any water used or likely to be used for human consumption or for any domestic or dairy purposes, and
  - (d) must not be located where the normal level of the ground water is less than one metre below the bottom of the cesspit.
- (2) If a cesspit is emptied, its contents must be disposed of in a sanitary manner and in accordance with any requirements of the council.

### **39 Mechanical waste treatment devices**

- (1) A bag used for the retention of waste in a mechanical device that treats waste by compaction, shredding or other means must be of a kind approved by the council.
- (2) Treated waste kept on premises after treatment other than wholly within the device is to be deposited in a receptacle of a kind approved by the council.

## **Subdivision 5 Accreditation of sewage management facilities**

### **40 Application of Subdivision**

- (1) This Subdivision applies to such models of the following sewage management facilities as are generally available for purchase by retail—
- (a) wet composting closets,
  - (b) waterless composting closets,
  - (c) septic closets,
  - (d) septic tanks,
  - (e) holding tanks and collection wells used for the receipt and storage of effluent (other than those intended to be emptied after each use, such as chamber pots),
  - (f) waste treatment devices designed to comminute or macerate and discharge sewage to a sewerage system,
  - (g) waste treatment devices that receive and treat sewage before discharging effluent to a common effluent drainage scheme,
  - (h) waste treatment devices that treat sewage using a specific process to produce biosolids and disinfected effluent to a standard suitable, either separately or in combination, for recycling by surface or sub-surface irrigation or by internal or external household use,
  - (i) any other kind of sewage management facility specified in a notice published in the Gazette by the Secretary for the purposes of this section.
- (2) However, this Subdivision does not apply—

- (a) to a sewage management facility intended to treat—
  - (i) sewage of a non-domestic nature, or
  - (ii) sewage from premises normally occupied by more than 10 persons, or
  - (iii) an average daily flow of sewage exceeding 2,000 litres, or
- (b) to the part of a sewage management facility that consists of a drain connected to the facility, or
- (c) to any other component of a sewage management facility that is specified in a notice published in the Gazette by the Secretary of the Ministry of Health for the purposes of this section.

#### 41 Facilities to be accredited

- (1) The council must not approve the installation or construction of a sewage management facility to which this Subdivision applies unless the council is satisfied that the facility is to be installed or constructed to a design or plan that is the subject of a certificate of accreditation from the Secretary of the Ministry of Health, being a certificate that is in force.
- (2) Subsection (1) does not apply to or in respect of a sewage management facility—
  - (a) that is to be installed or constructed as a model for the purposes of testing, or
  - (b) that is designed, and is to be constructed, by the owner or occupier of the premises on which it is to be installed, or
  - (c) that is designed, by a person other than the owner or occupier of the premises on which it is to be installed, specifically and uniquely for those premises.

### Subdivision 6 Approval required to operate system of sewage management

**Note.** This Regulation does not prescribe the matters that are to accompany an application for approval to operate a system of sewage management. Section 81 of the Act provides that an application for an approval under Part 1 of Chapter 7 of that Act (in which category such an application falls) must be accompanied by “such matters as may be prescribed by the regulations and such matters specified by the council as may be necessary to provide sufficient information to enable the council to determine the application”.

#### 42 Meaning of “operate a system of sewage management”

- (1) In this Subdivision, *operate a system of sewage management* means hold or process, or re-use or otherwise dispose of, sewage or by-products of sewage (whether or not the sewage is generated on the premises on which the system of sewage management is operated).
- (2) Without limiting subsection (1), *operate a system of sewage management* includes the following—
  - (a) use artificial wetlands, transpiration mounds, trenches, vegetation and the like in related effluent application areas,
  - (b) hold or process sewage that is to be subsequently discharged into a public sewer.
- (3) However, *operate a system of sewage management* does not include any of the following—
  - (a) any action relating to the discharge of sewage directly into a public sewer,
  - (b) any action relating to sewage or by-products of sewage after their discharge into a public sewer.

**43 Matters to be taken into consideration in determining applications for approval to operate system of sewage management**

In determining an application for approval to operate a system of sewage management, the council must consider any matter specified in guidelines or directions issued by the Secretary in relation to the environment and health protection matters referred to in section 29(2).

**Subdivision 7 Operation of system of sewage management**

**44 Performance standards for operation of system of sewage management**

- (1) A system of sewage management must be operated in a manner that achieves the following performance standards—
  - (a) the prevention of the spread of disease by micro-organisms,
  - (b) the prevention of the spread of foul odours,
  - (c) the prevention of contamination of water,
  - (d) the prevention of degradation of soil and vegetation,
  - (e) the discouragement of insects and vermin,
  - (f) ensuring that persons do not come into contact with untreated sewage or effluent (whether treated or not) in their ordinary activities on the premises concerned,
  - (g) the minimisation of any adverse impacts on the amenity of the premises and surrounding lands,
  - (h) if appropriate, provision for the re-use of resources (including nutrients, organic matter and water).
- (2) Failure to comply with subsection (1) is not a breach of that performance standard if the failure was due to circumstances beyond the control of the person operating the system of sewage management (such as a fire, flood, storm, earthquake, explosion, accident, epidemic or warlike action).
- (3) A system of sewage management must be operated—
  - (a) in accordance with the relevant operating specifications and procedures (if any) for the sewage management facilities used for the purpose, and
  - (b) so as to allow the removal of any treated sewage (and any by-product of any sewage) in a safe and sanitary manner.

**45 Further condition of approval in relation to operation of system of sewage management**

- (1) It is a condition of an approval to operate a system of sewage management that this section is complied with.
- (2) The sewage management facilities used in the operation of the system must be maintained in a sanitary condition and must be operated in accordance with the relevant requirements of this Regulation.
- (3) A sewage management facility used in the operation of the system must not discharge into any watercourse or onto any land other than its related effluent application area.
- (4) The conditions (if any) of any certificate of accreditation issued by the Secretary of the Ministry of Health under this Subdivision in respect of the plans or designs for any components of the sewage management facilities must be complied with.

- (5) The person operating the system of sewage management must provide details of the way in which it is operated, and evidence of compliance with the relevant requirements of this Regulation and of the conditions of the approval, whenever the council reasonably requires the person to do so.

**46 Approval to operate system of sewage management extends to concurrent owners and occupiers**

If an owner or occupier of land is the holder of an approval to operate a system of sewage management on the land (being an approval that is in force), any other owner or occupier of that land may operate the system of sewage management (without obtaining a further approval) in accordance with the conditions of the approval.

**47 Temporary exemption for purchaser of land**

- (1) Despite the other provisions of this Regulation, a person who purchases (or otherwise acquires) land on which any sewage management facilities are installed or constructed may operate a system of sewage management without the approval required under section 68 of the Act for the period of 3 months after the date on which the land is transferred or otherwise conveyed to the person (whether or not an approval is in force, as at that date, in relation to the operation of a system of sewage management on that land).
- (2) Further, if the person duly applies, within the period of 2 months after the date on which the land is transferred or otherwise conveyed to the person, for approval to operate the system of sewage management concerned, the person may continue to operate that system of sewage management without approval until the application is finally determined.

## **Subdivision 8 Exemptions**

**48 Activities for which approval is not required**

The following activities may be carried out without the prior approval of the council subject to such conditions as are specified—

(a) **Transport waste**

The transporting of waste over or under a public place for fee or reward if—

- (i) the activity is licensed under the *Protection of the Environment Operations Act 1997*, or
- (ii) the activity is being carried out in the Sydney metropolitan area as defined in Part 3 (Interpretative provisions) of Schedule 1 to that Act, or
- (iii) the waste is being transported through the area of the council and is not being collected or deposited in that area.

**Note.** A person who transports waste for fee or reward in circumstances that do not require a pollution control licence issued by the Environment Protection Authority must comply with the relevant requirements of the regulations made under the *Protection of the Environment Operations Act 1997*.

(b) **Place waste in a public place**

The placing of waste in a public place, if it is done in accordance with arrangements instituted by the council.

(c) **Discharge of domestic sewage into sewer**

The discharge of sewage of a domestic nature into a sewer of the council, if it is done in accordance with arrangements instituted by the council.

- (d) **Dispose of effluent into sewer**  
The disposal of septic tank effluent into a sewer of the council, if the premises are within a Common Effluent Drainage District declared by the council.
- (e) **Install, construct or alter a waste treatment device**  
The installation, construction or alteration of a waste treatment device, if that installation, construction or alteration is done—
- (i) under the authority of a licence in force under the *Protection of the Environment Operations Act 1997*, or
  - (ii) in a vessel used for navigation, or
  - (iii) in a motor vehicle that is registered within the meaning of the *Road Transport Act 2013* and is used primarily for road transport.
- (f) **Operate a system of sewage management**  
So much of the operation of a system of sewage management as is limited to an action carried out—
- (i) under the authority of a licence in force under the *Protection of the Environment Operations Act 1997*, or
  - (ii) in a vessel used for navigation, or
  - (iii) in a motor vehicle that is registered within the meaning of the *Road Transport Act 2013* and is used primarily for road transport.
- (g) **Activities authorised by licence under Water Industry Competition Act 2006**  
An activity referred to in Part B or C of the Table to section 68 of the Act if it is carried out under the authority of a licence in force under the *Water Industry Competition Act 2006*.

## **Division 5 Approvals relating to activities on community land and public roads and other activities**

### **Subdivision 1 Community land**

#### **49 Approval for the use of loudspeaker or amplifying device on community land not required in certain circumstances**

A loudspeaker or sound amplifying device may be set up, operated or used on community land without the prior approval of the council if it is done in accordance with a notice erected on the land by the council or if it is done in the circumstances specified, in relation to the setting up, operation or use (as the case may be), in Part I of the local approvals policy applying to the land.

### **Subdivision 2 Public roads**

#### **50 Matters for consideration by council in determining whether to approve applications relating to public roads**

In determining an application for an approval under Part E of the Table to section 68 of the Act the council must take into account—

- (a) the provisions of the *Roads Act 1993*, and
- (b) any relevant standards and policies of public authorities applying to the use of the road.



### **51 Compliance with standards—approvals relating to public roads**

It is a condition of an approval referred to in Part E of the Table to section 68 of the Act that the activity approved, and any building or work associated with or carried out in connection with the activity, complies with any applicable standards established by this Regulation or by any regulation in force under the Act or the *Environmental Planning and Assessment Act 1979*.

## **Subdivision 3 Public car parks**

### **52 Matters to accompany applications relating to the operation of a public car park**

An application to operate a public car park must be accompanied by the following—

- (a) 3 copies of a plan that sufficiently identifies the land concerned and the streets to which the land has frontage and, if the car park comprises the whole or part of a building, describes the building, its location on the site and any other purpose for which it is to be used,
- (b) details of the number of vehicles proposed to be accommodated in the car park and the manner in which this is to be done,
- (c) details of the means or proposed means of entry to or exit from the car park and as to the method of movement within the car park,
- (d) details of the off-street parking facilities available for the temporary accommodation of vehicles awaiting access to the car park,
- (e) details of ventilation to be provided if it is a building,
- (f) details of any petrol or oil or any motor service facilities to be provided in the car park,
- (g) details of the proposed hours of operation of the car park and as to the method or proposed method of receiving the fee or charge and the location or proposed location of any facility for receiving the fee or charge.

### **53 Matters to be taken into consideration by council in determining whether to approve the operation of a public car park**

In determining an application for approval to operate a public car park the council is to take the following matters into consideration—

- (a) the views of Transport for NSW about the application,
- (b) the effect of the car park on the movement of vehicular traffic and pedestrian traffic,
- (c) whether the number of vehicles proposed to be accommodated is appropriate having regard to the size of the car park and the need to provide off-street parking facilities within the car park for the temporary accommodation of vehicles,
- (d) whether the means of ingress and egress and means of movement provided or to be provided within the car park are satisfactory,
- (e) whether there will be adequate provision for pedestrian safety and access for people with disabilities,
- (f) whether the internal design of parking facilities and system of traffic management are satisfactory,
- (g) whether, in the case of a car park that is a building, adequate ventilation is provided or to be provided,

- (h) the *Work Health and Safety Act 2011*, and the regulations made under that Act, as regards the safety of persons who will be employed at the proposed car park or of persons who will go there,
- (i) whether there will be adequate provision for the management of stormwater and the minimisation of stormwater pollution.

**54 Standards to be met for approval**

The council must not grant an application for an approval to operate a public car park unless it is satisfied that the activity as proposed to be carried out will comply with any applicable standards established by this Regulation or by or under the Act.

**55 Compliance with standards**

It is a condition of an approval to operate a public car park that the activity approved, and any building or work associated with or carried out in connection with the activity, complies with any applicable standards established by this Regulation or by any regulation in force under the Act or the *Environmental Planning and Assessment Act 1979*.

**56 Number of vehicles**

The council may, as a condition of an approval to operate a public car park, specify the maximum number of vehicles that may be parked at any one time.

**57 Entries, exits and driveways**

- (1) Vehicles must not enter and leave a public car park through the one driveway. Vehicles must not enter or leave a public car park except through the entrance or exit openings provided.
- (2) Entrances, exits and driveways are to be provided and arranged, maintained and operated so as to facilitate the orderly entrance and exit of vehicles.
- (3) Exits must not be blocked by gates and other obstacles while the car park is open to the public.

**58 Surfaces**

All traffic ramps, parking spaces, entrances, exits, driveways and holding areas are to be surfaced with material approved by the council.

**59 Fencing**

Land used as a public car park must be fenced to a height determined by the council and with materials approved by the council.

**60 Lighting**

A public car park is, while open to the public, to be lit to the satisfaction of the council.

**61 Vehicles**

A vehicle is not to be permitted to park in a public car park unless any petrol tank on the vehicle is fitted with a turn cap or seal that is kept closed except when opened for the purpose of refuelling.

**62 Fire extinguishers**

A public car park must be provided with a sufficient number of fire extinguishers. The fire extinguishers must be emptied and recharged every 6 months.

**63 Speed limit**

Notices must be displayed in a public car park directing that vehicles are to be driven at a speed not greater than 8 kilometres per hour.

**64 Obstruction of roads**

A public road must not be used for the purpose of holding or marshalling vehicles in connection with a public car park.

**65 Concurrence required for operation of public car park**

The council must not grant an application for approval to operate a public car park except with the concurrence of Transport for NSW, given having regard to its functions under the road transport legislation (within the meaning of the *Road Transport Act 2013*) and the *Roads Act 1993*. Transport for NSW may give concurrence subject to conditions.

**66 Approval for operation of public car park not required in certain circumstances**

- (1) A public car park may be operated without the prior approval of the council if approval for its erection or operation has already been given by the council in connection with another approval or development consent and the car park complies with any applicable conditions of that approval or development consent.
- (2) In this section, *development consent* has the same meaning as it has in the *Environmental Planning and Assessment Act 1979*.

**Subdivision 4 Domestic oil or solid fuel heating appliances**

**67 Standards to be met for approval**

The council must not grant an application for an approval to install a domestic oil or solid fuel heating appliance (other than a portable appliance) unless it is satisfied that the activity as proposed to be carried out will comply with any applicable standards established by this Regulation or by or under the Act.

**68 Compliance with standards**

It is a condition of an approval to install a domestic oil or solid fuel heating appliance (other than a portable appliance) that the activity approved, and any building or work associated with or carried out in connection with the activity, complies with any applicable standards established by this Regulation or by or under the Act.

**69 Adoption of Building Code of Australia**

- (1) All matters relating to the installation of a domestic oil or solid fuel heating appliance (other than a portable appliance) are to be governed by the applicable provisions of the *Building Code of Australia*.
- (2) In this section—  
*Building Code of Australia* has the same meaning as it has in the *Environmental Planning and Assessment Act 1979*.
- (3) For the purposes of this section—
  - (a) a reference in the *Building Code of Australia* to the *appropriate authority* is a reference to the relevant authority exercising approval powers under the Act, and
  - (b) the reference in the *Building Code of Australia* in the definition of *Certificate of Accreditation* to a State or Territory accreditation authority is a reference to

the Secretary when exercising his or her functions under Division 5 of Part 1 of Chapter 7 (sections 120–123B) of the Act.

**70 Approval for installation of domestic oil or solid fuel heating appliance not required in certain circumstances**

A domestic oil or solid fuel heating appliance (other than a portable appliance) may be installed without the prior approval of the council if details of the appliance are included in plans and specifications for the relevant building approved under Part 6 of the *Environmental Planning and Assessment Act 1979*.

**Subdivision 5 Amusement devices**

**71 Activities for which approval is not required**

Amusement devices not required to be registered under the *Work Health and Safety Regulation 2017* may be installed or operated without the prior approval of the council.

**Note.** See the *Work Health and Safety Regulation 2017*, Schedule 5, Part 2 for items of plant that are required to be registered.

**72 Standards to be met for approval**

The council must not grant an application for an approval to install or operate an amusement device unless it is satisfied—

- (a) that the ground or other surface on which the device is to be or has been erected is sufficiently firm to sustain the device while it is in operation and is not dangerous because of its slope or irregularity or for any other reason, and
- (b) that the device is registered under the *Work Health and Safety Regulation 2017*, and
- (c) that the device is to be or has been erected in accordance with all conditions (if any) relating to its erection set out in the current certificate of registration issued for the device under that Regulation, and
- (d) that there exists for the device a current log book as referred to in that Regulation, Chapter 5, Part 5.2, Division 4, Subdivision 2, and
- (e) that there is in force a contract of insurance or indemnity for the device that complies with section 74.

**73 Compliance with standards**

It is a condition of an approval to install or operate an amusement device, that the activity approved, and any building or work associated with or carried out in connection with the activity, complies with the following standards—

- (a) the ground or other surface on which the device is to be or has been erected is sufficiently firm to sustain the device while it is in operation and is not dangerous because of its slope or irregularity or for any other reason,
- (b) the device is registered under the *Work Health and Safety Regulation 2017*,
- (c) all conditions (if any) subject to which the device is so registered and all relevant requirements of that Regulation are complied with,
- (d) the device is installed (including erected) and operated in a safe manner.

**74 Insurance**

It is a condition of an approval to install or operate an amusement device that there must be in force a contract of insurance or indemnity that indemnifies to an unlimited extent (or up to an amount of not less than \$10,000,000 in respect of each accident)

each person who would be liable for damages for death or personal injury arising out of the operation or use of the device and any total or partial failure or collapse of the device against that liability.

**75 Approval for installation or operation of small amusement devices not required in certain circumstances**

- (1) In this section, *small amusement device* means an amusement device that is designed primarily for the use of children 12 years of age or under and includes such amusement devices as mini-Ferris wheels, battery operated cars and miniature railways but, in the case of rotating amusement devices, includes only those devices that have a maximum rotation of 14 revolutions per minute.
- (2) A small amusement device may be installed or operated without the prior approval of the council if—
  - (a) the ground or other surface on which the device is to be or has been erected is sufficiently firm to sustain the device while it is in operation and is not dangerous because of its slope or irregularity or for any other reason, and
  - (b) the device is registered under the *Work Health and Safety Regulation 2017*, and
  - (c) the device—
    - (i) is to be or has been erected, and
    - (ii) it to be or is being operated,in accordance with all conditions (if any) relating to its erection or operation set out in the current certificate of registration issued for the device under that Regulation, and
  - (d) there exists for the device a current log book as referred to in that Regulation, Chapter 5, Part 5.2, Division 4, Subdivision 2, and
  - (e) in the case of a device that is to be or is installed in a building, fire egress is not obstructed, and
  - (f) there is in force a contract of insurance or indemnity for the device that complies with section 74.

**Subdivision 6 Domestic greywater diversion**

**75A Approval required for domestic greywater diversion**

- (1) For the purposes of item 10 of Part F of the Table to section 68 of the Act, domestic greywater diversion is prescribed as an activity that requires the prior approval of the council.
- (2) However, domestic greywater diversion may be carried out without the prior approval of the council if—
  - (a) it is carried out in accordance with the Plumbing Code of Australia, and
  - (b) a sewage management facility is not installed on the premises concerned, and
  - (c) the following performance standards are achieved—
    - (i) the prevention of the spread of disease by micro-organisms,
    - (ii) the prevention of the spread of foul odours,
    - (iii) the prevention of contamination of water,
    - (iv) the prevention of degradation of soil and vegetation,
    - (v) the discouragement of insects and vermin,

- (vi) ensuring that persons do not come into contact with untreated sewage or effluent (whether treated or not) in their ordinary activities on the premises concerned,
  - (vii) the minimisation of any adverse impacts on the amenity of the premises concerned and surrounding lands.
- (3) Failure to comply with subsection (2)(c) is not a breach of that performance standard if the failure was due to circumstances beyond the control of the person carrying out the domestic greywater diversion.
- (4) In this section—
- domestic greywater diversion** means the installation and operation of a system for diverting greywater generated on residential premises to a garden or lawn on those premises, but does not include the manual collection and re-use of greywater (for example, by means of a bucket or similar receptacle).
- greywater** means waste water from washing machines, laundry tubs, showers, hand basins and baths, but does not include waste water from a kitchen, toilet, urinal or bidet.
- residential premises** does not include premises comprising more than one dwelling.

## **Division 6      Miscellaneous**

### **76    Form of application for accreditation of components, processes, designs or temporary structures**

For the purposes of Division 5 of Part 1 of Chapter 7 of the Act, an application for the accreditation of a component, process, design or temporary structure must—

- (a) be in writing, and
- (b) include a description of the component, process, design or temporary structure to which it relates, and
- (c) be accompanied by a copy of a certificate of accreditation issued by the Building Regulations Advisory Committee (within the meaning of the *Building Act 1993* of Victoria), if it is so accredited, or if it is not, documentary evidence of any test procedures, results, performances or appraisals relevant to the proposed accreditation that have been obtained from a recognised appraisal body.

### **77    Public notice of draft local approvals policies**

The public notice required to be given by the council under section 160(1) of the Act must—

- (a) be published—
  - (i) on the website of the council, and
  - (ii) in any other manner that the council considers necessary to bring it to the attention of members of the public in the area of the council, and
- (b) be published on the website at least 7 days before the commencement of the public exhibition of the draft local policy and remain there at least until the conclusion of the period during which submissions may be made to the council in relation to the policy.

### **78    Public notice of approval**

- (1) For the purposes of section 675 of the Act, the prescribed manner of giving public notice of the granting of an approval is to publish the notice—
  - (a) on the website of the council, and

- (b) in any other manner that the council considers necessary to bring it to the attention of members of the public in the area of the council.
- (2) For the purposes of section 675 of the Act, the prescribed form of public notice of the granting of an approval is a form that includes—
  - (a) a precise indication of the location of any place in relation to which the approval is granted (for example, the address of the place and any other description to help a reader identify the place) and a brief description of the subject-matter of the approval, and
  - (b) a statement setting out where a record of the approval is available for inspection.

**79 Matters to be submitted to council**

If this Regulation requires evidence or a document to be submitted to council, any copy of the evidence or document is to be a complete and unabridged copy of the original.

**80 Application may be made for approval for exempted activity**

A person may apply for approval under the Act for the carrying out of an activity, and the application may be determined, even though the person is exempted from the necessity to obtain approval by a local approvals policy.

**81 Local approvals policies—standards**

- (1) If a person is exempt (because of a local approvals policy) from the requirement to obtain approval for an activity, the exemption is subject to the condition that the activity comply with the standards referred to in sections 31, 44, 51, 55, 68 and 73.
- (2) However, the activity must so comply only to the extent that the provisions (and the standards to which they refer) would apply to the activity if the activity had not been the subject of an exemption under the local approvals policy.
- (3) However, if the local approvals policy specifies, as the circumstances (or as part of the circumstances) for the exemption, that the activity is carried out in such part of an area, or such an area, as is specified in the policy, subsections (1) and (2) do not apply to the activity.
- (4) Subsection (3) does not prevent a local approvals policy from specifying compliance with one or more of the standards referred to in subsection (1) as part of the circumstances for an exemption under section 158(3) of the Act.

## Part 3 Orders

**Note.** In this Part, a reference to an Order of a particular number is a reference to the Order of that number set out in the Table to section 124 of the Act.

### Division 1 Orders requiring or prohibiting the doing of things to or on premises

#### 82 Relevant standards for camping grounds, caravan parks, manufactured home estates and moveable dwellings

For the purposes of—

- (a) Order No 5 (a) in its operation as to camping grounds, caravan parks and manufactured home estates, and
  - (b) Order No 5 (b) in its operation as to moveable dwellings,
- any applicable standards referred to in the *Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2021* are relevant standards referred to in Columns 1 and 2 of the Table to section 124 of the Act.

**Note.** An Order can be made requiring compliance with these standards if they are not being complied with.

#### 83 Relevant standards for certain places of shared accommodation

- (1) This section applies to the following kinds of places of shared accommodation—
  - (a) places of shared accommodation that are class 3 buildings under the *Building Code of Australia* (within the meaning of the *Environmental Planning and Assessment Act 1979*),
  - (b) places of shared accommodation that are general boarding houses within the meaning of the *Boarding Houses Act 2012*.
- (2) For the purposes of Order No 5 (d) in its operation as to places of shared accommodation to which this section applies, the standards for places of shared accommodation set out in Part 1 of Schedule 2 are relevant standards referred to in Columns 1 and 2 of the Table to section 124 of the Act.

**Note.** An Order can be made requiring compliance with these standards if they are not being complied with.

#### 84 Relevant standards for hairdressers shops

For the purposes of Order No 5 (e), the standards for hairdressers shops set out in Part 2 of Schedule 2 are relevant standards referred to in Columns 1 and 2 of the Table to section 124 of the Act.

**Note.** An Order can be made requiring compliance with these standards if they are not being complied with.

#### 85 Relevant standards for beauty salons

For the purposes of Order No 5 (e), the standards for beauty salons set out in Part 3 of Schedule 2 are relevant standards referred to in Columns 1 and 2 of the Table to section 124 of the Act.

**Note.** An Order can be made requiring compliance with these standards if they are not being complied with.

#### 86 Relevant standards for mortuaries

For the purposes of Order No 5 (f), the standards for mortuaries set out in Part 4 of Schedule 2 are relevant standards referred to in Columns 1 and 2 of the Table to section 124 of the Act.



**Note.** An Order can be made requiring compliance with these standards if they are not being complied with.

#### **87 Water supply and sewerage system pipes, fittings and fixtures**

- (1) Without limiting Order No 5 (h), and except in the case of a defect to which section 88 applies, the following acts are taken to be included in Column 1 of the Table to section 124 of the Act as acts that may be required by that Order—
  - (a) to remove, replace, alter, extend or repair a pipe, fitting or fixture located on premises connected to the council's water supply system or sewerage system,
  - (b) to stop using such a pipe, fitting or fixture pending its removal, replacement, alteration, extension or repair.
- (2) This section applies only in relation to work that is not plumbing and drainage work within the meaning of the *Plumbing and Drainage Act 2011*.

#### **88 Rectification of defective water supply or sewerage work**

- (1) For the purposes of Order No 5 (h) (and without limiting that Order) in the case of an Order to a licensed contractor under Column 3 of the Table to section 124 of the Act in respect of a defect, the circumstances specified in Column 2 are taken to be included in that Column only where the council notifies the contractor of the defect after the date of issue by the contractor of a certificate to the effect that the work has been carried out as required by the Act and the *Environmental Planning and Assessment Act 1979*.
- (2) A licensed contractor so notified must bear the cost of rectifying the defect.
- (3) A circumstance in which the defective work is the subject of an order made by the Civil and Administrative Tribunal under the *Home Building Act 1989* constitutes a circumstance that is taken to be excluded from the circumstances specified in Column 2 of the Table to section 124 of the Act as circumstances in which Order No 5 (h) can be made.
- (4) An Order given by a council in respect of any such defective work ceases to have effect if an order referred to in subsection (3) is made in respect of the defective work.
- (5) This section applies only in relation to work that is not plumbing and drainage work within the meaning of the *Plumbing and Drainage Act 2011*.

#### **89 Flow of surface water across land**

- (1) Without limiting Order No 12, the repair of defective or insufficient roofing, guttering, downpiping or drainage is taken to be included in Column 1 of the Table to section 124 of the Act as an act that may be required by that Order.
- (2) Without limiting Order No 12, the circumstance in which the surface water is turbid or otherwise polluted and is flowing across the land boundary constitutes a circumstance that is taken to be included in the circumstances specified in Column 2 of the Table to section 124 of the Act as circumstances in which Order No 12 may be made.

### **Division 2 Orders requiring that premises be used or not used in specified ways**

#### **90 Septic tank or closet**

Without limiting Order No 15, a circumstance in which a septic tank or a septic closet is being constructed, or used, on premises after the date specified (in Order No 24 served on the owner or occupier of the premises) as the date by which the premises were required to be connected with a sewerage system constitutes a circumstance that

is taken to be included in the circumstances specified in Column 2 of the Table to section 124 of the Act as circumstances in which Order No 15 may be made.

**91 Keeping of birds or animals**

Without limiting Order No 18, failure to comply with relevant standards or requirements set or made by or under the Act constitutes a circumstance that is taken to be included in the circumstances specified in Column 2 of the Table to section 124 of the Act as circumstances in which Order No 18 may be made.

**92 Relevant standards for keeping of birds or animals**

For the purposes of Order No 18, the standards for the keeping of birds or animals set out in Part 5 of Schedule 2 are relevant standards referred to in Column 2 of the Table to section 124 of the Act.

**Note.** An Order can be made requiring compliance with these standards if they are not being complied with.

**Division 3 Orders requiring the preservation of healthy conditions**

**93 Water carting vehicles**

Without limiting Order No 20, the following circumstances are taken to be included in the circumstances specified in Column 2 of the Table to section 124 of the Act as circumstances in which that Order may be made—

- (a) a vessel used on a vehicle to cart water does not have an aperture that is large enough to enable easy inspection of the interior or thorough cleaning of the interior,
- (b) the cover of any such aperture is not of a kind that is able to be kept thoroughly clean.

**94 Disposal of certain waste**

For the purposes of Order No 22, and without limiting that Order, failure to comply with the standards for the disposal of certain waste set out in Part 6 of Schedule 2 is taken to be a circumstance in which waste is not being dealt with satisfactorily.

**95 Connection of premises to council's water supply**

Without limiting Order No 23 in the Table to section 124 of the Act, the following acts are taken to be included in Column 1 of that Table as acts that may be required by that Order—

- (a) the construction of all necessary pipes, and the installation of all necessary fixtures and fittings,
- (b) the construction or installation of a separate service pipe to the premises, or to each of the premises concerned.

**96 Connection of premises to a sewerage system**

- (1) Without limiting Order No 24 in the Table to section 124 of the Act, the following acts are taken to be included in Column 1 of that Table as acts that may be required by that Order—

- (a) the construction of all necessary pipes, and the installation of all necessary fixtures and fittings,
- (b) the construction or installation of a separate service pipe to the premises, or to each of the premises concerned.

- (2) The circumstances specified in Column 2 of the Table to section 124 of the Act in relation to Order No 24 of the Table are taken to include the following—  
The sewerage system of a public authority or a State owned corporation is available and the premises can be connected to the system by gravity, pumping or other means considered by the council to be suitable. This applies to all areas in which a public authority or a State owned corporation maintains a sewerage system.

## Division 4 Miscellaneous

### 97 Copies of certain orders to be provided to EPA

- (1) If a council gives Order No 11, 12, 18, 21, 22 or 25 in respect of land or premises and the land or the land on which the premises are situated is subject to statutory contaminated land management, the council must provide the EPA with a copy of the Order and of any modification or revocation of it.
- (2) Failure to provide the EPA with a copy does not invalidate an Order, modification or revocation.
- (3) In this section—

*EPA* means the Environment Protection Authority constituted by the *Protection of the Environment Administration Act 1991*.

*statutory contaminated land management* means that one or more of the following matters under the *Contaminated Land Management Act 1997* apply in relation to the land—

- (a) the land is significantly contaminated land within the meaning of that Act and the council has been notified under section 59 of that Act that the land is significantly contaminated land,
- (b) a management order is in force under Part 3 of that Act and the council has been notified under section 59 of that Act that the order is in force,
- (c) an approved voluntary management proposal applies to the land under section 17 of that Act and the council has been notified under section 59 of that Act that the proposal has been approved,
- (d) an ongoing maintenance order has effect under section 28 of that Act and the council has been notified under section 59 of that Act that the order has effect,
- (e) a restriction on the use of the land or a public positive covenant has been imposed by the EPA on the land under section 29 of that Act.

**Note.** Section 7(2) of the *Protection of the Environment Operations Act 1997* provides for that Act to prevail over any other Act or statutory rule to the extent of any inconsistency and for a regulation under that Act to prevail over any other statutory rule to the extent of any inconsistency.

Section 109 of the *Contaminated Land Management Act 1997* provides that the exercise of functions under other Acts must not be inconsistent with the functions of the EPA or other public authority under that Act.

### 98 Standards for water supply, sewerage or stormwater drainage work

An Order under section 124 of the Act requiring water supply, sewerage or stormwater drainage work to be carried out is not complied with unless the work is carried out in accordance with any applicable standards or requirements set out or referred to in Part 2 of this Regulation or the Order.

### 99 Information to be included in Orders

As well as the matters required by sections 136, 137 and 138 of the Act, the following information is to be included in an Order given by a council—

- (a) any relevant provision of the Act, local orders policy or regulations made under the Act that is not being or has not been complied with,
- (b) that it is an offence not to comply with an Order and the maximum penalty for the offence,
- (c) that, if the Order is not complied with, the council may give effect to the Order and recover the costs of doing so from the person concerned.

**Note.** Section 193 of the Act requires the council to give the owner or occupier of premises written notice before a person authorised to enter premises under Part 2 of Chapter 8 of the Act does so.

#### **100 Public notice of local orders policy**

The public notice required to be given by the council under section 160(1) of the Act must—

- (a) be published—
  - (i) on the website of the council, and
  - (ii) in any other manner that the council considers necessary to bring it to the attention of members of the public in the area of the council, and
- (b) be published on the website at least 7 days before the commencement of the public exhibition of the draft local policy and remain there at least until the conclusion of the period during which submissions may be made to the council in relation to the policy.

## Part 4 Community land

### Division 1 Guidelines for the categorisation of community land

#### 101 Application of this Division

- (1) This Division sets out guidelines for the categorisation of community land.
- (2) A council that is preparing a draft plan of management under section 36 of the Act must have regard to the guidelines set out in this Division.

#### 102 Guidelines for categorisation of land as a natural area

Land should be categorised as a natural area under section 36(4) of the Act if the land, whether or not in an undisturbed state, possesses a significant geological feature, geomorphological feature, landform, representative system or other natural feature or attribute that would be sufficient to further categorise the land as bushland, wetland, escarpment, watercourse or foreshore under section 36(5) of the Act.

**Note.** Sections 36A and 36B of the Act provide that community land comprising the habitat of endangered or threatened species must be categorised as a natural area.

Section 36C of the Act provides that community land that is the site of a known natural, geological, geomorphological, scenic or other feature that is considered by the council to warrant protection or special management considerations, or that is the site of a wildlife corridor, must be categorised as a natural area.

#### 103 Guidelines for categorisation of land as a sportsground

Land should be categorised as a sportsground under section 36(4) of the Act if the land is used or proposed to be used primarily for active recreation involving organised sports or the playing of outdoor games.

#### 104 Guidelines for categorisation of land as a park

Land should be categorised as a park under section 36(4) of the Act if the land is, or is proposed to be, improved by landscaping, gardens or the provision of non-sporting equipment and facilities, for use mainly for passive or active recreational, social, educational and cultural pursuits that do not unduly intrude on the peaceful enjoyment of the land by others.

#### 105 Guidelines for categorisation of land as an area of cultural significance

Land should be categorised as an area of cultural significance under section 36(4) of the Act if the land is—

- (a) an area of Aboriginal significance, because the land—
  - (i) has been declared an Aboriginal place under section 84 of the *National Parks and Wildlife Act 1974*, or
  - (ii) whether or not in an undisturbed state, is significant to Aboriginal people in terms of their traditional or contemporary cultures, or
  - (iii) is of significance or interest because of Aboriginal associations, or
  - (iv) displays physical evidence of Aboriginal occupation (for example, items or artifacts such as stone tools, weapons, engraving sites, sacred trees, sharpening grooves or other deposits, and objects or materials that relate to the settlement of the land or place), or
  - (v) is associated with Aboriginal stories, or
  - (vi) contains heritage items dating after European settlement that help to explain the relationship between Aboriginal people and later settlers, or
- (b) an area of aesthetic significance, by virtue of—

- (i) having strong visual or sensory appeal or cohesion, or
- (ii) including a significant landmark, or
- (iii) having creative or technical qualities, such as architectural excellence, or
- (c) an area of archaeological significance, because the area contains—
  - (i) evidence of past human activity (for example, below-ground features such as building foundations, occupation deposits, features or artifacts or above-ground features such as buildings, works, industrial structures, and relics, whether intact or ruined), or
  - (ii) any other deposit, object or material that relates to the settlement of the land, or
- (d) an area of historical significance, because of the importance of an association or position of the land in the evolving pattern of Australian cultural history, or
- (e) an area of technical or research significance, because of the area's contribution to an understanding of Australia's cultural history or environment, or
- (f) an area of social significance, because of the area's association with Aboriginal life after 1788 or the area's association with a contemporary community for social, spiritual or other reasons.

**106 Guidelines for categorisation of land as general community use**

Land should be categorised as general community use under section 36(4) of the Act if the land—

- (a) may be made available for use for any purpose for which community land may be used, whether by the public at large or by specific sections of the public, and
- (b) is not required to be categorised as a natural area under section 36A, 36B or 36C of the Act and does not satisfy the guidelines under sections 102–105 of this Regulation for categorisation as a natural area, a sportsground, a park or an area of cultural significance.

**107 Guidelines for categorisation of land as bushland**

- (1) Land that is categorised as a natural area should be further categorised as bushland under section 36(5) of the Act if the land contains primarily native vegetation and that vegetation—
  - (a) is the natural vegetation or a remainder of the natural vegetation of the land, or
  - (b) although not the natural vegetation of the land, is still representative of the structure or floristics, or structure and floristics, of the natural vegetation in the locality.
- (2) Such land includes—
  - (a) bushland that is mostly undisturbed with a good mix of tree ages, and natural regeneration, where the understorey is comprised of native grasses and herbs or native shrubs, and that contains a range of habitats for native fauna (such as logs, shrubs, tree hollows and leaf litter), or
  - (b) moderately disturbed bushland with some regeneration of trees and shrubs, where there may be a regrowth area with trees of even age, where native shrubs and grasses are present in the understorey even though there may be some weed invasion, or
  - (c) highly disturbed bushland where the native understorey has been removed, where there may be significant weed invasion and where dead and dying trees are present, where there is no natural regeneration of trees or shrubs, but where the land is still capable of being rehabilitated.

**108 Guidelines for categorisation of land as wetland**

Land that is categorised as a natural area should be further categorised as wetland under section 36(5) of the Act if the land includes marshes, mangroves, backwaters, billabongs, swamps, sedgelands, wet meadows or wet heathlands that form a waterbody that is inundated cyclically, intermittently or permanently with fresh, brackish or salt water, whether slow moving or stationary.

**109 Guidelines for categorisation of land as an escarpment**

Land that is categorised as a natural area should be further categorised as an escarpment under section 36(5) of the Act if—

- (a) the land includes such features as a long cliff-like ridge or rock, and
- (b) the land includes significant or unusual geological, geomorphological or scenic qualities.

**110 Guidelines for categorisation of land as a watercourse**

Land that is categorised as a natural area should be further categorised as a watercourse under section 36(5) of the Act if the land includes—

- (a) any stream of water, whether perennial or intermittent, flowing in a natural channel, or in a natural channel that has been artificially improved, or in an artificial channel that has changed the course of the stream of water, and any other stream of water into or from which the stream of water flows, and
- (b) associated riparian land or vegetation.

**111 Guidelines for categorisation of land as foreshore**

Land that is categorised as a natural area should be further categorised as foreshore under section 36(5) of the Act if the land is situated on the water's edge and forms a transition zone between the aquatic and terrestrial environment.

**Division 2 Preparation and adoption of draft plans of management for community land**

**112 Consultation concerning categorisation of land as an area of cultural significance**

- (1) A council that is considering whether or not land is an area of Aboriginal significance (within the meaning of section 105(a)) must give notice of that consideration to Aboriginal people traditionally associated with the area in which the land is situated.
- (2) That notice must be given by—
  - (a) giving written notice to the following—
    - (i) the Local Aboriginal Land Council for the area concerned,
    - (ii) New South Wales Native Title Services Limited (ACN 098 971 209),
    - (iii) the Registrar appointed under the *Aboriginal Land Rights Act 1983*,
    - (iv) the Secretary of the Department of Premier and Cabinet,
    - (v) the Secretary of the Department of Planning, Industry and Environment, and
  - (b) publishing the notice—
    - (i) on the website of the council, and
    - (ii) in any other manner that the council considers necessary to bring it to the attention of Aboriginal people traditionally associated with the area in which the land is situated, and

- (c) placing a written notice on the land in a position where the notice is visible to any person on adjacent public land.
- (3) The notice—
  - (a) must state that submissions may be made to the council, in relation to the council's consideration, by any Aboriginal person traditionally associated with the area in which the community land is situated, and
  - (b) must specify a period of not less than 28 days after the date on which the notice is given during which submissions may be made to the council.
- (4) A council that is considering whether or not land is an area of Aboriginal significance (within the meaning of section 105(a)) must not make a final determination on that matter unless the council has considered any submissions made under this section by Aboriginal people traditionally associated with the area in which the community land is situated.
- (5) A council must not prepare a draft plan of management that categorises community land as an area of cultural significance on the ground that the land is an area of Aboriginal significance (within the meaning of section 105(a)) unless the council has called for and considered any submissions made under this section by Aboriginal people traditionally associated with the area in which the community land is situated.

**113 Preparation of draft plan of management where land is categorised in more than one category**

A draft plan of management that categorises an area of community land, or parts of an area of community land, in more than one category must clearly identify the land or parts of the land and the separate categories (by a map or otherwise).

**114 Adoption of draft plan of management in relation to which certain submissions have been made**

- (1) This section applies if—
  - (a) a council prepares a draft plan of management, and
  - (b) the council receives any submission, made in accordance with the Act, concerning that draft plan that makes any objection to a categorisation of land under the draft plan, and
  - (c) the council adopts the plan of management without amending the categorisation that gave rise to the objection.
- (2) If this section applies, the resolution by which the council adopts the plan of management must state the council's reasons for categorising the relevant land in the manner that gave rise to the objection.

**Division 3 Other matters**

**116 Leases, licences and other estates in respect of community land**

- (1) For the purposes of section 46(1)(b)(iii) of the Act, the use or occupation of community land for the following events is prescribed as a purpose in respect of which a council may grant a licence in respect of community land on a short-term, casual basis—
  - (a) the playing of a musical instrument, or singing, for fee or reward,
  - (b) engaging in a trade or business,
  - (c) the playing of a lawful game or sport,
  - (d) the delivery of a public address,



- (e) commercial photographic sessions,
  - (f) picnics and private celebrations such as weddings and family gatherings,
  - (g) filming sessions,
  - (h) the agistment of stock.
- (2) However, the use or occupation of community land for events listed in subsection (1) is prescribed only if the use or occupation does not involve the erection of any building or structure of a permanent nature.
- (3) For the purposes of section 46(1)(b)(iii) of the Act, the use of any existing road or fire trail on community land—
- (a) to transport building materials and equipment required in relation to building work that is to be, or is being, carried out on land adjoining the community land, or
  - (b) to remove waste that is consequential on such work,
- is prescribed as a short-term, casual purpose.
- (4) For the purposes of section 46(1)(b)(iii) of the Act, the use of any community land that does not have an existing road or fire trail—
- (a) to transport building materials and equipment required in relation to building work that is to be, or is being, carried out on land adjoining the community land, or
  - (b) to remove waste that is consequential on such work,
- is prescribed as a short-term, casual purpose if such work is for a purpose referred to in section 46(4)(a)(ii) of the Act.
- (5) In this section, *existing road or fire trail* means a road or a fire trail that was in existence on 1 January 2001.

**117 Exemptions from section 47A of the Act (Leases, licences and other estates in respect of community land—terms of 5 years or less)**

- (1) Leases, licenses and other estates granted for the following purposes are exempt from the provisions of section 47A of the Act—
- (a) residential purposes, where the relevant community land has been developed for the purposes of housing owned by the council,
  - (b) the provision of pipes, conduits or other connections under the surface of the ground for the connection of premises adjoining the community land to a facility of the council or other public utility provider that is situated on the community land,
  - (c) use and occupation of the community land for events such as—
    - (i) a public performance (that is, a theatrical, musical or other entertainment for the amusement of the public),
    - (ii) the playing of a musical instrument, or singing, for fee or reward,
    - (iii) engaging in a trade or business,
    - (iv) playing of any lawful game or sport,
    - (v) delivering a public address,
    - (vi) conducting a commercial photographic session,
    - (vii) picnics and private celebrations such as weddings and family gatherings,
    - (viii) filming,
  - (d) a purpose referred to in section 116(3) or (4).

- (2) However, the use or occupation of community land for events listed in subsection (1)(c) is exempt only if—
  - (a) the use or occupation does not involve the erection of any building or structure of a permanent nature, and
  - (b) in the case of any use or occupation that occurs only once, it does not continue for more than 3 consecutive days, and
  - (c) in the case of any use or occupation that occurs more than once, each occurrence is for no more than 3 consecutive days, not including Saturday and Sunday, and the period from the first occurrence until the last occurrence is not more than 12 months.

#### **118 Additional notifications in relation to certain filming projects**

- (1) This section prescribes, for the purposes of section 47AA of the Act, the additional manner of notification or advertisement of a council's proposal under section 47A of the Act to grant a lease, licence or other estate in respect of community land in order to allow a filming project to be carried out on that community land.
- (2) If the community land is—
  - (a) critical habitat (as defined in section 36A(1) of the Act), or
  - (b) directly affected by a recovery plan or threat abatement plan (as referred to in section 36B(2) of the Act),written notice is to be given to the Secretary.
- (3) If the community land is declared to be an area of cultural significance under section 36D(1) of the Act because of the presence on the land of any item that the council considers to be of Aboriginal significance—
  - (a) written notice is to be given to the Local Aboriginal Land Council for the area in which the land is situated, and
  - (b) a copy of the notice is to be published—
    - (i) on the website of the council, and
    - (ii) in any other manner that the council considers necessary to bring it to the attention of Aboriginal people traditionally associated with the area in which the land is situated.
- (4) A notice required by this section must include the matter specified in section 47(2) of the Act (subject to section 47AA(2) of the Act).

#### **119 Sublease of community land**

For the purposes of section 47C(1)(b) of the Act—

- (a) refreshment kiosks, dances and private parties are prescribed as purposes for which community land that is leased for a surf life-saving club or a sporting club may be sublet, and
- (b) a croquet club is prescribed as a purpose for which community land that is used as a bowling club may be sublet.

## Part 5 Rates and charges

### Division 1 Preliminary

#### 120 Application of Part

The provisions of this Part that relate to the making and levying of ordinary rates do not apply to county councils.

### Division 2 Levying of rates and charges

#### 121 Land used for caravan park or manufactured home not to be categorised as residential (the Act, section 516(2))

If the dominant use of land is for a caravan park or a manufactured home estate, the land is not to be categorised as residential for rating purposes.

#### 122 Land used for retirement village, serviced apartments or time-shares to be categorised as residential (the Act, section 516(2))

If the dominant use of land is for a retirement village, serviced apartments or a time-share scheme, the land is to be categorised as residential for rating purposes.

#### 123 Land exempt from rates (the Act, section 556)

The following land is exempt from all rates, except water supply special rates and sewerage special rates—

- (a) all land leased by the Royal Agricultural Society in the Homebush Bay area (as defined in the *Olympic Co-ordination Authority Act 1995* before the repeal of that Act),
- (b) all land occupied by the Museum of Contemporary Art Limited,
- (c) all land comprising the site known as Museum of Sydney, on the site of first Government House,
- (d) all land that is held by a body corporate on behalf of an Aboriginal person or persons pursuant to an indigenous land use agreement registered under the *Native Title Act 1993* of the Commonwealth.

#### 125 Services for which an annual charge may be imposed (the Act, section 501)

- (1) Emergency services provided or proposed to be provided within the area of the Blue Mountains City Council are prescribed for the purposes of section 501 of the Act.
- (2) In this section, *emergency services* includes (without limitation) bushfire and other fire services, civil emergency services, and management services associated with emergency services.

#### 125A Annual charges for stormwater management services

- (1) For the purposes of section 496A of the Act, a council may make or levy an annual charge for stormwater management services only in respect of urban land that is categorised for rating purposes as residential or business.

**Note.** Part 3 of Chapter 15 of the Act allows a council to categorise each parcel of land within its area.

- (2) A council may not make or levy an annual charge for the provision of stormwater management services in respect of a parcel of land if—
  - (a) the parcel of land is vacant land, or

- (b) the parcel of land is subject to a special rate or charge that has been made for or towards meeting the cost of any works, services, facilities or activities the primary purpose of which is the provision of stormwater management services.
- (3) A council may not make or levy an annual charge for the provision of stormwater management services if the council has received an instrument from the Minister under section 508 or 508A of the Act which specifies the percentage by which the council may vary its income and the instrument imposes a condition with respect to that variation to the effect that the primary purpose of the variation is to fund stormwater management services.
- (4) A council may not make or levy an annual charge for the provision of stormwater management services for a parcel of land that exceeds—
  - (a) if the anticipated cost of providing stormwater management services to the parcel of rateable land is less than the maximum annual charge in respect of the parcel of rateable land—the anticipated cost, or
  - (b) if the anticipated cost referred to in paragraph (a) is equal to or greater than the maximum annual charge in respect of the parcel of rateable land—the maximum annual charge for the parcel of rateable land.
- (5) In this section—

**maximum annual charge**, in respect of a parcel of land, means the maximum annual charge that may be made or levied by a council in respect of the parcel of rateable land in accordance with section 125AA.

**urban land** means land within a city, town or village.

**125AA Maximum annual charge for stormwater management services (the Act, section 510A)**

- (1) The maximum annual charge for stormwater management services that may be levied in respect of a parcel of rateable land is—
  - (a) for land categorised as residential (other than land referred to in paragraph (b))—\$25, and
  - (b) for a lot in a strata scheme that is categorised as residential—\$12.50, and
  - (c) for land categorised as business (other than land referred to in paragraph (d))—\$25, plus an additional \$25 for each 350 square metres or part of 350 square metres by which the area of the parcel of land exceeds 350 square metres, and
  - (d) for a lot in a strata scheme that is categorised as business—the greater of the following—
    - (i) \$5,
    - (ii) the relevant proportion of the maximum annual charge that would apply to the land subject to the strata scheme if it were a parcel of land subject to paragraph (c).
- (2) In this section, the **relevant proportion**, in relation to a lot in a strata scheme, is the proportion that the unit entitlement of that lot in the scheme bears to the aggregate unit entitlement of the scheme.
- (3) Words and expressions used in this section have the same meanings as they have in the *Strata Schemes Management Act 2015*.

**126 Minimum amounts of rate**

For the purposes of section 548(3)(a) of the Act, the amount prescribed is \$565.

## 127 Rates and charges notices

- (1) A rates and charges notice must contain the following information—
  - (a) the land to which it relates,
  - (b) the land value of the land to which it relates and the base date of the general valuation from which the land value is derived,
  - (c) particulars of each rate or charge levied on the land by the notice,
  - (d) if the rate consists of a base amount to which an ad valorem amount is added, particulars of the base amount,
  - (e) the date the notice is taken to have effect,
  - (f) particulars of any outstanding arrears of rates and charges levied on the land and of any interest payable on those amounts,
  - (g) the total amount due and the dates for payment of the rates or charges concerned,
  - (h) the amounts payable for, and the due dates for payment of, instalments of rates or charges,
  - (i) particulars of any waiver of an amount of special rate in consideration of payment of a lump sum,
  - (j) a statement that concessions are available to eligible pensioners for any quarter in which they are eligible pensioners,
  - (k) particulars of any concession extended in respect of payment of the rates,
  - (l) particulars of any discount for prompt payment in full of a rate or charge,
  - (m) particulars of any postponement of rates or postponed rates,
  - (n) particulars of any option to pay a lump sum towards the capital cost of any works, services or facilities instead of a special rate in the notice,
  - (o) a statement that if payment is not made on or before the due date or dates interest accrues on the overdue amount,
  - (p) a statement as to how to make inquiries about the notice,
  - (q) the text, or a summary, of the following provisions of the Act (if applicable)—
    - (i) section 524 (Notice of change of category),
    - (ii) section 525 (Application for change of category),
    - (iii) section 526 (Appeal against declaration of category),
    - (iv) section 555 (What land is exempt from all rates?),
    - (v) section 556 (What land is exempt from all rates, other than water supply special rates and sewerage special rates?),
    - (vi) section 557 (What land is exempt from water supply special rates and sewerage special rates?),
    - (vii) section 562 (Payment of rates and annual charges),
    - (viii) section 563 (Discount for prompt payment in full),
    - (ix) section 564 (Agreement as to periodical payment of rates and charges),
    - (x) section 566 (Accrual of interest on overdue rates and charges),
    - (xi) section 567 (Writing off of accrued interest),
    - (xii) section 574 (Appeal on question of whether land is rateable or subject to a charge).
- (2) If the notice includes particulars of a fire and emergency services levy that is payable, the notice may show the total amount payable for instalments for rates or charges and

the fire and emergency services levy (instead of showing separately the instalments payable for rates or charges and the instalments payable for the levy).

(3) In this section—

*fire and emergency services levy* means the levy under the *Fire and Emergency Services Levy Act 2017*.

#### **128 Information relating to rates and charges**

A council must, if required to do so by the Minister or the Secretary, furnish information to the Minister or the Secretary, in the form required, relating to rates and charges levied by the council.

### **Division 3 Payment of rates and charges**

#### **129 Request for transfer of land in payment of rates, charges or accrued interest**

A request to the council for the acceptance of a transfer of land under section 570 of the Act in payment of rates, charges or accrued interest must be in writing, be signed by each owner or person having an interest in the land concerned and contain the following information—

- (a) title particulars and the rate assessment number of the land,
- (b) particulars of any mortgage, charge, lien or other encumbrance affecting the land.

#### **130 Additional circumstances in which rates or charges may be written off: the Act, section 607**

The council may write off the whole or part of any stormwater management services charge or the interest accrued on any such charge if—

- (a) in the opinion of the council, the ratepayer liable for the charge has demonstrated that the ratepayer has practised good stormwater management, or
- (b) the person liable for the charge is an eligible pensioner.

#### **131 Procedures for writing off rates and charges**

- (1) The council must, from time to time, by resolution, fix the amount of rates and charges above which any individual rate or charge may be written off only by resolution of the council.
- (2) An amount of rates or charges of or below that amount can be written off either by resolution of the council or by order in writing of the council's general manager. In the absence of a resolution under subsection (1), rates and charges can be written off only by resolution of the council.
- (3) A resolution or order writing off an amount of rates or charges must—
  - (a) specify the name of the person whose debt is being written off, and
  - (b) identify the account concerned, and
  - (c) specify the amount written off,or must refer to a record kept by the council in which those particulars are recorded.
- (4) An amount of rates or charges can be written off under this section only—
  - (a) if there is an error in the assessment, or
  - (b) if the amount is not lawfully recoverable, or
  - (c) as a result of a decision of a court, or

- (d) if the council or the general manager believes on reasonable grounds that an attempt to recover the amount would not be cost effective.
- (5) The fact that an amount of rates or charges is written off under this section does not prevent the council concerned from taking legal proceedings to recover the amount.
- (6) The general manager must advise the council of rates and charges written off by written order of the general manager.

### 132 Details of written off rates and charges to be included in annual report

The council's annual report must include the amount of rates and charges written off during the year.

### 133 Sale of land to recover overdue rates or charges

An advertisement under section 715(1) of the Act notifying a proposed sale of land for unpaid rates or charges is to contain the following information—

- (a) that the council proposes to sell the land for unpaid rates or charges at public auction,
- (b) the name of the auctioneer and the proposed place, date and time of the auction,
- (c) the persons known to the council to have an interest in the land,
- (d) the amount of rates and charges unpaid for more than 5 years from the date on which they became payable and the amount of any interest accrued,
- (e) the amount of any other rates and charges payable and unpaid and the amount of any interest accrued,
- (f) the total amount due,
- (g) that, if all rates and charges payable (including overdue rates and charges) are not paid to the council or an arrangement satisfactory to the council is not entered into by the rateable person before the time fixed for the sale, the council will proceed with the sale.

## Division 4 Pensioners

### 134 Eligible pensioners for the purposes of determining pensioner concessions—prescribed classes

For the purposes of paragraph (a) of the definition of *eligible pensioner* in the Dictionary to the Act, the following classes of persons are prescribed—

- (a) persons who receive a pension, benefit or allowance under Chapter 2 of the *Social Security Act 1991* of the Commonwealth, or a service pension under Part III of the *Veterans' Entitlements Act 1986* of the Commonwealth, and who are entitled to a pensioner concession card issued by or on behalf of the Commonwealth Government,
- (b) persons who receive a pension from the Commonwealth Department of Veterans' Affairs as—
  - (i) a war widow or war widower within the meaning of the *Veterans' Entitlements Act 1986* of the Commonwealth, or
  - (ii) the unmarried mother of a deceased unmarried member of the Australian Defence or Peacekeeping Forces, or
  - (iii) the widowed mother of a deceased unmarried member of the Australian Defence or Peacekeeping Forces,

and do not have income and assets that would prevent them from being granted a pensioner concession card (assuming they were eligible for such a card),

- (b1) persons who have received a lump sum mentioned in section 234(1)(b) of the *Military Rehabilitation and Compensation Act 2004* of the Commonwealth or are receiving a weekly amount mentioned in that paragraph, and do not have income and assets that would prevent them from being granted a pensioner concession card (assuming they were eligible for such a card),
- (c) persons who receive a general rate of pension adjusted for extreme disablement under section 22(4) of the *Veterans' Entitlements Act 1986* of the Commonwealth, or a special rate of pension under section 24 of that Act,
- (d) persons who receive, or who at some point in their life have been eligible for, a Special Rate Disability Pension under the *Military Rehabilitation and Compensation Act 2004* of the Commonwealth.

**135 Application for eligible pensioners concession**

An application under Division 1 of Part 8 of Chapter 15 of the Act is to be made in the form approved by the Secretary.

**136 Abandonment of pensioners rates and charges—prescribed persons**

For the purposes of section 582 of the Act, any person who receives a pension, benefit or allowance under Chapter 2 of the *Social Security Act 1991* of the Commonwealth and is the holder of a pensioner concession card issued by or on behalf of the Commonwealth Government is a prescribed person.



## Part 5A Environmental upgrade agreements

### 136A What are environmental upgrade works?

- (1) For the purposes of section 54E of the Act, *environmental upgrade works* include any works in respect of a building that result in an environmental improvement in respect of the use and occupation of the building.
- (2) Works result in an *environmental improvement* if the works—
  - (a) increase the efficiency of energy or water consumption, or
  - (b) reduce energy or water consumption, or
  - (c) prevent or reduce pollution, or
  - (d) eliminate or reduce the discharge of wastes, or other substances, that are harmful to the environment, or
  - (e) reduce the use of materials, or
  - (f) enable the recovery or recycling of materials, or
  - (g) enable the monitoring of environmental quality, or
  - (h) reduce greenhouse gas emissions, or
  - (i) encourage or facilitate alternative methods of transportation to the use of a private motor vehicle (such as walking and cycling).
- (3) Without limiting the above, the following works are environmental upgrade works if they result in an environmental improvement—
  - (a) the replacement, modification, removal or installation of end-user equipment,
  - (b) the modification of the usage of end-user equipment.
- (4) In this section—

*end-user equipment* means any equipment, process or system that—

  - (a) directly consumes energy or water, causes a risk to human health, or degrades the environment, or
  - (b) controls or influences the impact any other equipment, process or system has on the consumption of energy or water, human health, or the environment.

### 136B Delegation of power to impose charge

- (1) A council may, by resolution, delegate to the general manager of the council the function of making or amending environmental upgrade charges under an environmental upgrade agreement.
- (2) The general manager cannot sub-delegate such a function.
- (3) Sections 377 and 378 of the Act are modified to the extent necessary to give effect to this section.

### 136C Form of charge

- (1) It is not necessary for a council, when making an environmental upgrade charge, to give a short separate name for each amount of the charge.
- (2) Section 543 of the Act is modified to the extent necessary to give effect to this section.

**136D Curing of irregularities**

Section 545 of the Act is modified so that a reference to the Minister, in relation to an environmental upgrade charge, is to be read as a reference to the Minister for Energy and Environment or the Minister's delegate.

**136E Levying of charge on strata buildings**

- (1) An environmental upgrade charge levied on land that is the subject of a strata scheme is a charge on all lots that are the subject of the strata scheme.
- (2) However, the amount of any unpaid environmental upgrade charge is to be apportioned between the lots the subject of the strata scheme, so that the charge payable in respect of each lot the subject of the strata scheme is taken to be the relevant proportion of the unpaid environmental upgrade charge.
- (3) If the charge payable in respect of a particular lot is paid by the owner of the lot, the unpaid environmental charge to which the payment relates ceases to be a charge on that lot.
- (4) In this section, the *relevant proportion* is the proportion that the unit entitlement of a lot bears to the aggregate unit entitlement of all lots the subject of the strata scheme.
- (5) Unit entitlements are determined in accordance with the *Strata Schemes Development Act 2015*.
- (6) Section 550 of the Act, and the provisions of Part 7 of Chapter 15 of the Act that apply in respect of environmental upgrade charges, are modified to the extent necessary to give effect to this section.
- (7) To avoid doubt, a reference in this section to the amount of any unpaid environmental upgrade charge includes a reference to any amount charged under an environmental upgrade agreement for late payment of an environmental upgrade charge.

**136F Payment of environmental upgrade charges by lessees**

- (1) The Crown is liable to pay an environmental upgrade charge in respect of land owned by the Crown if the environmental upgrade charge is levied under an environmental upgrade agreement that the Crown entered into as owner of the land.
- (2) This section applies even if the land is held under a lease for private purposes.
- (3) Section 561 of the Act is modified to the extent necessary to give effect to this section.
- (4) This section does not affect the application of section 54N of the Act in respect of any lease of the land by the Crown.

**136G Payment of environmental upgrade charges by instalment**

Section 562 of the Act applies to the payment of environmental upgrade charges, unless otherwise agreed by the parties to the environmental upgrade agreement.

**136H Accrual of interest on overdue charges**

- (1) Section 566 of the Act applies in relation to any interest on an unpaid environmental upgrade charge that is charged by or on behalf of a finance provider under an environmental upgrade agreement in the same way as it applies in relation to rates and charges levied by a council under Chapter 15 of the Act.
- (2) Accordingly, a reference in section 566(3) of the Act to the rate of interest set by the council is to be read as a reference to the rate of interest charged by or on behalf of the finance provider.

**136I Application of payments**

Section 568 of the Act applies to environmental upgrade charges.

**136J Certificate issued by Council as to environmental upgrade charges**

- (1) A certificate issued by a council under section 603 of the Act in respect of a parcel of land that is affected by an environmental upgrade agreement is to state (in addition to the matters referred to in that section) the amount of any environmental upgrade charges that are due and payable under the agreement.
- (2) Land is affected by an environmental upgrade agreement if there is an environmental upgrade agreement in force that enables the council to levy an environmental upgrade charge in respect of the land.
- (3) Section 603 of the Act is modified to the extent necessary to give effect to this section.

**136K Sale of land to pay charge**

- (1) If a council sells land as a result of a failure to pay an environmental upgrade charge, the unpaid environmental upgrade charge ceases to be a charge on the land when the purchase money for the land is paid to the council (even if the purchase money is insufficient to satisfy the amount of the unpaid environmental upgrade charge).
- (2) However, if the purchase money is insufficient to satisfy the amount of the unpaid environmental upgrade charge, a person who, before the sale, was liable to pay the environmental upgrade charge continues to be liable to pay the outstanding amount of the unpaid environmental upgrade charge.
- (3) Section 719(b) of the Act does not apply in respect of an environmental upgrade charge.

**136L Modification of Retail Leases Act 1994**

- (1) Section 12 of the *Retail Leases Act 1994* does not apply to a provision of a lease that requires a lessee to pay an environmental upgrade contribution.
- (2) Accordingly, an environmental upgrade contribution may be recovered whether or not the contribution is disclosed in a disclosure statement given to the lessee in accordance with Part 2 of that Act.
- (3) Section 24A of the *Retail Leases Act 1994* does not apply to a provision of a lease to that requires a lessee to pay an environmental upgrade contribution.
- (4) In this section, an *environmental upgrade contribution* means a contribution towards an environmental upgrade charge payable under an environmental upgrade agreement.

**136M Mandatory requirements of guidelines**

Sections 4–7 of the guidelines made under section 54Q of the Act and published in the Gazette on 18 February 2011 are adopted as mandatory requirements.

**Note.** A council must comply with any mandatory requirements of the guidelines in exercising its functions under Part 2A of Chapter 6 of the Act.

## Part 6 Water services

### Division 1 General provisions

#### 137 Water supply may be restricted if there is a shortage of supply

- (1) A council that considers the available stored water in a water supply system supplying its area, or the available capacity of supply from that system, to be insufficient to allow the unrestricted consumption of water for purposes other than domestic purposes may, by notice published in accordance with this section, restrict—
  - (a) the purposes for which the water can be used, or
  - (b) the times when the water can be used, or
  - (c) the methods by which the water can be used, or
  - (d) the quantities of the water that can be used.
- (2) The council may, by notice published in accordance with this section, place the same sort of restrictions as are referred to in subsection (1) on the use of water from such a water supply system for any purposes (including domestic purposes)—
  - (a) if there is a drought, or
  - (b) if the available stored water, or the available capacity of supply, is so limited as to make extraordinary measures necessary in the general interest of water consumers.
- (3) Restrictions under this section can be imposed in respect of all of the council area supplied by the water supply system, but can apply to a part of that area if and only if—
  - (a) the shortage of water or shortage in capacity of supply is limited to that part, or
  - (b) the council orders the supply to be restricted to different parts of the area in rotation.
- (4) Restrictions under this section can be imposed only by a notice of the council published on the website of the council.
- (5) All agreements made by the council relating to the supply of water are subject to this section.
- (6) This section does not authorise the council to make orders restricting persons' rights under the *Water Act 1912* or the *Water Management Act 2000*.

#### 137A Substances prohibited from being discharged into public sewers

- (1) For the purposes of section 638 of the Act (Discharge of prohibited matter into sewer or drain), roof, rain, surface, seepage or ground water is prescribed as prohibited matter.
- (2) This section does not apply in relation to—
  - (a) a discharge that is specifically approved under section 68 of the Act, or
  - (b) a discharge into a public drain or a gutter of a council, or
  - (c) a discharge in an area of operations within the meaning of the *Sydney Water Act 1994* or the *Hunter Water Act 1991*.

#### 138 Works for which approval is required under section 60 of the Act

- (1) The Minister for Water, Property and Housing may give a council an approval for the purposes of section 60 of the Act if and only if—

- (a) the council has made an application in writing for consent that is accompanied by the relevant documents, and
  - (b) either the council has complied with any requirement of that Minister to supply further information with respect to the application or that Minister has waived any such requirement, and
  - (c) that Minister is satisfied that the council is competent to exercise the powers that it would not be able to exercise without that approval, and
  - (d) all inspections of the work and the site of the work that that Minister has directed to be carried out for the purpose of enabling the application to be considered have been carried out.
- (2) The relevant documents are—
- (a) the plans and specifications of, and documents and data in the possession of the council that are relevant to, the exercise of power in respect of which the approval is sought, and
  - (b) any documents containing details sufficient to satisfy the Minister for Water, Property and Housing of the matters referred to in subsection (1)(b)–(d).
- (3) If the Minister for Water, Property and Housing has, for the purposes of section 60 of the Act, approved the exercise by the council of its powers with respect to a work, that Minister may, by notice in writing to the council, revoke that approval if the council has failed—
- (a) to comply with any requirements that that Minister has made with respect to the provision of additional plans, specifications, documents or information with respect to the exercise of those powers, or
  - (b) to comply with any directions that that Minister has given with respect to the work, or
  - (c) to accept any supervision of the exercise of those powers that that Minister has required.

### **139 Erection of notices to indicate catchment districts**

The council may, on land in a catchment district, erect such notices as it considers necessary for indicating the boundaries of the district and directing attention to any prohibitions or restrictions applicable to the district.

**Note.** Section 640 of the Act provides that contravention of a prohibition or restriction in such a notice is an offence.

## **Division 2 Functions of councils**

### **141 Works constructed to serve 2 or more council areas**

- (1) If water supply works have been constructed to serve the areas of 2 or more councils, the council that has control of the works is required to supply water to each of the other councils concerned, either at the boundary of its area or at some other convenient point that may be mutually agreed with those other councils.
- (2) If sewerage works have been constructed to serve the areas of 2 or more councils, the council controlling the sewer mains through which sewage has to flow must allow that flow.
- (3) If stormwater drainage works have been constructed to serve the areas of 2 or more councils, a council controlling a component of the stormwater drainage system must facilitate the proper functioning of the system.

- (4) If the capital cost of the water supply, sewerage or stormwater drainage works has not been notified as a joint debt, the council that has control of the works may make a charge for—
  - (a) the supply of water from the water supply works, or
  - (b) allowing the flow of sewage through the sewerage works and for pumping and treating the sewage, or
  - (c) managing the flow of stormwater through the stormwater drainage works.
- (5) Such a charge is to be—
  - (a) of such amount as may be agreed with each of the other councils concerned, or
  - (b) if there is no agreement, of such amount as the Minister may from time to time determine and notify to all of the councils concerned.

#### **142 Fire hydrants**

- (1) The council—
  - (a) must install hydrants in its water mains at such convenient distances, and at such places, as may be necessary for the ready supply of water to extinguish fires, and
  - (b) must maintain the hydrants in effective working order.

This subsection does not apply to a water main that is less than 100 millimetres in diameter or if the water supply system is not sufficient for the operation of fire hydrants (in such circumstances the council may provide other means for the ready supply of water to extinguish fires).

- (2) The council may, at the request and expense of the owner or occupier of a building, install a hydrant (to be used only for extinguishing fires) in or in the vicinity of the building. If such a hydrant is installed, the council must ensure that it is maintained in effective working order.
- (3) A council may remove a hydrant from any of its water mains if satisfied on reasonable grounds that the hydrant is no longer needed.
- (4) The council must at all times keep charged with water all its pipes to which hydrants are connected unless prevented from doing so—
  - (a) by drought or other unavoidable cause or accident, or
  - (b) while necessary repairs to the pipe or hydrant are being carried out.
- (5) Persons authorised to do so by the council may take water without charge for the purpose of extinguishing fires.

#### **143 Inspection of pipes and drains and measurement of water and sewage**

- (1) The council may, at any reasonable time—
  - (a) inspect any service pipe connected to a water main, and
  - (b) inspect any drain connected to a sewer main, and
  - (c) install meters or other devices for measuring the quantity of water supplied to, or the quality and quantity of sewage discharged from, premises, and
  - (d) measure the quantity of water supplied to, or the quality and quantity of sewage discharged from, premises, and
  - (e) inspect any pre-treatment devices connected to the council's sewerage system.
- (2) The occupier of the relevant premises must provide to the council such information as it requires to enable it to estimate the quantity of water actually supplied to, or the quality and quantity of sewage actually discharged from, the premises.

- (3) In this section, *pre-treatment device* means any device used to reduce or eliminate contaminants in trade waste, or to alter the waste's nature, before it is discharged into a sewer.

#### **144 Cutting off or restricting water supply**

- (1) The council may cut off or restrict the supply of water to premises—
- (a) if any water meter used to measure that supply is out of repair or, in the opinion of the council, incorrectly registers the supply of water, or
  - (b) if any rates or charges in respect of the water supplied to the premises are unpaid, or
  - (c) if, in the opinion of the council, that action is necessary because of unusual drought or other unavoidable cause or any accident, or
  - (d) if the owner or occupier or person requiring a supply of water fails to comply with a lawful order or requirement of the council as to installing water meters or instruments for measuring the quantity of water supplied, or
  - (e) if the owner or occupier or person requiring a supply of water fails to comply with a lawful order or requirement of the council to repair or alter water connections, pipes, fittings or fixtures connected to the council's water supply system, or
  - (f) if the occupier of the premises contravenes a provision of Division 3 of this Part or fails to comply with any council order or public notice requiring consumers of water to economise its use in time of drought or scarcity of supply, or
  - (g) if the owner or occupier of the premises fails to comply with a requirement of a council order to remove, replace, alter, extend, repair or stop using a water pipe, fitting or fixture.
- (2) The cutting off of the supply of water under this section for non-payment of rates or charges does not affect the liability of the rateable person to pay those rates or charges.
- (3) If the council cuts off the supply of water to premises because—
- (a) there is no water meter installed on the premises, or
  - (b) the water meter on the premises registers incorrectly, or
  - (c) water rates or charges for the premises are unpaid,
- the council may refuse to supply water to those premises until a water meter is installed on the premises, the water meter registers correctly or the water rates or charges are paid (as the case may require).

#### **145 New sewer or stormwater drain to be constructed if it is less costly than a connection to an existing sewer or stormwater drain**

- (1) A council that believes that it would cost more to provide for the flow of existing sewers or stormwater drains on 2 or more separate premises to empty into an existing sewer or stormwater drain than it would to provide for the flow to empty into a new sewer or stormwater drain may construct a new sewer or stormwater drain for that purpose.
- (2) A council, on constructing such a new sewer or stormwater drain, may, by order served on the owners or occupiers of the premises concerned, order those owners or occupiers to cause the sewers or stormwater drains on each of those premises to empty into the new sewer or stormwater drain.
- (3) The council—

- (a) must apportion fairly the expenses of the construction of the new sewer or stormwater drain among the owners or occupiers of each of the premises affected, and
- (b) require those owners or occupiers to pay the apportioned expenses to the council.

**146 Connections to council's sewerage system**

- (1) If premises are liable to a special sewerage rate, the council may, at the request of the person liable to pay rates in respect of the premises—
  - (a) carry out such works as may be necessary to provide for the drainage of sewage from the premises, and
  - (b) provide such connections as may be necessary to enable fixtures installed on the premises to discharge their contents into the council's sewerage system.
- (2) The council may, in respect of work done or any materials provided under subsection (1), impose on the person a charge sufficient to meet the cost of the work or materials.
- (3) Such a charge—
  - (a) must cover the cost of doing the work or providing the materials, together with interest on that cost at a rate not exceeding that fixed in respect of overdue rates, and
  - (b) may be recovered by equated instalments of principal and interest during such period as the council determines.
- (4) Any such charge may be recovered as a rate and is to be a charge on the premises in respect of which it is imposed as if it were a rate.
- (5) The council is not responsible for the repair, maintenance or renewal of any work done or materials provided under this section on or in respect of the premises concerned, except as regards defective work or materials.
- (6) Any work so done or materials so provided belongs to the owner of those premises.

**147 Water not to be supplied through water supply work until inspected and certified**

The council must not supply water through a water supply work connected to the council's water supply system until the work has been inspected and certified—

- (a) by the council or a suitably qualified person determined by the council, or
- (b) if the water supply work is of a type for which the approval of the Minister for Water, Property and Housing is required under section 60 of the Act—in accordance with paragraph (a) or, if that Minister has specifically authorised inspection and certification by another suitably qualified person, by that person,

as having been constructed in accordance with all applicable standards or requirements set out or referred to in the Act and this Regulation.

**148 Council to prepare map of water supply, sewerage and stormwater drainage works**

- (1) The council—
  - (a) must, before or within a reasonable time after water supply, sewerage or stormwater drainage works have been constructed, prepare a map of the works and the surrounding land that is liable to be rated or become subject to an annual charge for services in relation to the works, and
  - (b) must from time to time, as the works are extended, amend the map so that it shows the extended works and the land.



- (2) The council must ensure that every such map also shows—
  - (a) the levels of the works at the road frontages of the land, and
  - (b) so far as is reasonably practicable, the distances from the works of the nearest boundaries of that land and the location of buildings on that land, and
  - (c) any information relating to the works that might reasonably be expected to affect construction work that might be carried out on the land.
- (3) The owner or occupier of land affected by such a map, or any other person who has the written permission of such an owner, is entitled to inspect the map during the council's office hours.

#### **149 Plans of connections to sewerage or stormwater drainage systems**

If the owner or occupier of premises has been ordered by the council to connect the premises to the council's sewerage system or stormwater drainage system, the council must give that owner or occupier a plan showing the location of the connection.

#### **150 Inspection of drainage diagrams**

An owner or occupier of land affected by the installation of drains in accordance with an approval referred to in item 4 or 5 of Part B of the Table to section 68 of the Act (or any other person with the written permission of such an owner) is entitled to inspect, during the council's office hours, any diagrams of those drains provided to the council as a condition of the approval.

### **Division 3 General requirements relating to water supply, sewerage and stormwater drainage**

#### **151 Water supply, sewerage and stormwater drainage work to comply with applicable standards and requirements**

- (1) Water supply work and sewerage work that is plumbing and drainage work within the meaning of the *Plumbing and Drainage Act 2011* must comply with any requirements of that Act or the regulations made under that Act.
- (2) Any other water supply work or sewerage work, and any stormwater drainage work, must comply with any applicable standards or requirements set out or referred to in the Act or this Regulation.

#### **152 Premises to be connected to water supply by an independent house service pipe**

- (1) The owner of premises must, unless the council authorises otherwise, ensure that the premises are not connected to a property service pipe linked to the council's water supply system except by an independent house service pipe.
- (2) The owner of premises connected to the council's water supply by an independent house service pipe must ensure that the pipe has a stop-valve within the premises that is not more than 450 millimetres from the road alignment or at some other place within the premises approved by the council.
- (3) If several premises are supplied with water by a single house service pipe, the council may require, as a condition of the supply, that a separate house service pipe be laid to each of the premises.
- (4) If the council authorises the connection of 2 or more premises by means of a single house service pipe, the owner of each of the premises must (unless all the premises are occupied by a single household or firm as a residence or place of business) ensure that there is installed on each of those premises—

- (a) a separate stop-valve that complies with subsection (2), and
  - (b) a separate water meter to measure the water supply to those premises.
- (5) The owner of a group of contiguous premises may request the council to lay a large property service pipe or water sub-main to supply 2 or more of the premises in the group.

**153 Laying of house service pipes**

- (1) A person must not lay a house service pipe that is to be connected to the council's water supply system otherwise than in accordance with the Plumbing Code of Australia.
- (2) However, a person does not contravene subsection (1) only by laying a house service pipe at a depth less than that required by the Plumbing Code of Australia if the council has, in writing, authorised the person to do so.

**154 Privately owned water meters to be of a size and class approved by the council**

- (1) Before a water meter (other than a water meter hired from or provided by the council) is installed on premises connected or to be connected to the council's water supply system, the owner of the premises concerned must submit the meter to the council for testing and stamping.
- (2) If it is proposed to move such a water meter to a new position and more than 2 years has elapsed since the meter was last tested and stamped by the council, the owner of the premises concerned must resubmit it for further testing and stamping before moving it to the new position.
- (3) The council is not required to test and stamp a water meter submitted or resubmitted under this section unless the fee fixed by the council is paid.

**155 Security of water meters**

- (1) The owner of premises on which there is located a water meter connected to the council's water supply system must, if required by the council to do so, protect the meter by enclosing it in a box constructed of metal, wood or other strong durable material and fitted with a lock and key approved by the council.
- (2) The owner of such premises must, if the council so requires, deposit with the council the key to the water meter or, if it is enclosed in a meter-box, the key to the box immediately after the meter or box is installed.

**156 Water meter not to be used to measure the water supplied to more than one premises except in certain cases**

- (1) The owner of premises on which a water meter is installed must ensure that the meter is not used to measure the quantity of water supplied by the council to other premises.
- (2) Subsection (1) does not apply—
- (a) if the premises and the other premises are occupied by a single household or firm as a residence or place of business, or
  - (b) if the council authorises the meter to measure the water supplied to the premises and the other premises.
- (3) In those circumstances—
- (a) the council must credit the relevant water account with the amount of any water rate or charge paid in respect of all the premises, and
  - (b) the owner of the premises on which the water meter is installed must ensure that—

- (i) the meter is directly connected to the water main by a single property service pipe, and
  - (ii) the water for each of the premises passes through and is measured by the meter.
- (4) However, if there are special circumstances requiring the laying of 2 or more service pipes, the owner of the premises must ensure that each service pipe is connected to a water meter.
- (5) In that case, the council must credit the water account of each meter with the amount of any water rate or charge paid in respect of the premises supplied through the relevant service pipe.

#### **157 Hire of meters**

- (1) A person who wishes to hire a water meter from the council must execute an agreement prepared for that purpose.
- (2) The agreement must contain the conditions on which the meter is to be hired.

#### **158 Testing of meters**

- (1) At the request of an owner or occupier of premises and on the payment of a fee fixed by the council, the council must arrange for a water meter installed on the premises to be examined and tested.
- (2) The council may, on its own initiative, arrange for such a water meter to be examined and tested.
- (3) If, as a result of such an examination and test, a water meter is found not to correctly measure the quantity of water passing through it, the council may charge for the supply of water—
  - (a) on the basis of a daily consumption equal to the average daily consumption during the corresponding meter reading period of the previous year, or
  - (b) on such other basis as the council and the consumer may agree.
- (4) Testing carried out at the request of a person who is the owner or occupier of premises is to be at the expense of the person, unless the meter is one hired from or provided by the council and the testing indicates that the meter is defective, in which case the testing is to be at the expense of the council.
- (5) A water meter that registers less than 4 per cent more or less than the correct quantity is taken to correctly measure the water passing through it.
- (6) If a water meter provided by the council is found to be defective, the council must replace it with one that is not defective.
- (7) If a privately owned meter is found to be defective, the council may require the owner to rectify the meter or, if the defect cannot be rectified, replace the meter with one that is not defective. An owner who is required to rectify or replace a meter must comply with the requirement.
- (8) The rectification or replacement is to be at the expense of the owner.
- (9) When a privately owned water meter is being rectified or is awaiting replacement, the supply of water to the owner of the meter—
  - (a) is to be regulated by special contract made between the owner and the council, and
  - (b) is to be restricted to use for domestic purposes.

**159 Prevention of waste and misuse of water**

The owner, occupier or manager of premises to which water is supplied by the council must—

- (a) prevent waste of water by taking prompt action to repair leaking taps, pipes or fittings located on the premises, and
- (b) take any other action that is reasonable to prevent waste and misuse of water.

**160 Misuse of water**

An occupier of premises supplied with water from the council's water supply system must not—

- (a) take any of the water away from the premises, or
- (b) allow any other person to take any of the water away from the premises, or
- (c) use water contrary to a council notice restricting the use of water, other than in accordance with arrangements instituted by the council.

**161 Particular provisions for unmetered premises**

- (1) In this section, *unmetered premises* means premises to which the council supplies water other than through a water meter.
- (2) An occupier of unmetered premises supplied with water from the council's water supply system must not use the water for purposes other than domestic purposes unless the water is supplied under a special contract or the permission of the council has been obtained.
- (3) For the purposes of subsection (2), the use of water for domestic purposes does not include the use of water for any of the following—
  - (a) buildings used for housing animals or birds (not being buildings also used for human habitation),
  - (b) a manufacturing purpose,
  - (c) the irrigation or sprinkling of crops, gardens or lawns,
  - (d) the production of power for fountains,
  - (e) ornamental purposes.
- (4) A person must not install or allow to remain installed within unmetered premises a tap or device to which a hose can be attached, unless—
  - (a) the water supplied by the council is supplied under a contract allowing the use of the tap or device, and
  - (b) any special fee for the tap or device fixed by the council has been paid.
- (5) A person must not, on unmetered premises to which water is supplied by the council for domestic purposes, use a hose for the purpose of watering a garden or laying dust (or any similar purpose) with the water supplied, unless—
  - (a) the activity is specifically authorised by an arrangement entered into with the council, and
  - (b) any fee required by the arrangement has been paid.

**162 Joint sewerage services prohibited**

- (1) The owner of premises connected to the council's sewerage system must ensure—
  - (a) that any house drain on the premises is kept separate from that of all other premises, and

- (b) that the only fittings and fixtures permitted to discharge into the house drain are those located on the premises.
- (2) The owner of premises on which a house drain is or is to be connected to the council's sewerage system must ensure that the drain is laid within the boundary of the premises until it—
  - (a) reaches that system or the boundary nearest to that system, or
  - (b) emerges into a public place.

## Part 7 Tendering

### Division 1 Preliminary

#### 163 Application of Part

- (1) This Part applies to all contracts for which a council is required by section 55 of the Act to invite tenders.
- Note.** This Part does not apply to other kinds of contracts. However, a council may apply provisions of this Part (with any necessary alterations) to other kinds of contracts if it wishes to do so.
- (1A) The following persons are prescribed for the purposes of section 55(3)(a) of the Act—
- (a) The Trustee for LGP (LGA NSW) Trust & the Trustee for LGP (SA NSW) Trust, trading as Local Government Procurement Partnership (ABN 34 578 553 267),
  - (b) Procurement Australasia Ltd (ABN 45 058 335 363).
- (1B) To avoid doubt, a reference to a person prescribed by subsection (1A) includes any duly appointed agent of that person.

#### 164 Definitions

In this Part—

**appropriate person**, in relation to a tender submitted to a council, means a person designated by the general manager to receive or deal with tenders submitted to the council and, if a person is not designated, means the general manager.

**electronic means** includes electronic communication within the meaning of the *Electronic Transactions Act 2000*.

**formal tender document** means a standard form document issued by a council for completion by tenderers in connection with the submission of tenders to the council.

**goods** includes materials.

**instalment contract** means a contract requiring the payment of instalments by or to a council over a period of 2 or more years.

**public authority** includes a council.

**tender** means a tender submitted or proposed to be submitted to a council in accordance with this Part.

**Note.** Part 2 of the *Electronic Transactions Act 2000* facilitates the use of electronic communication as a means of effecting certain transactions, such as contracts.

#### 165 Requirements for contracts to which this Part applies

- (1) A council may enter into a contract to which this Part applies only in accordance with the provisions of this Part.
- (2) A contract to which this Part applies, and any variation or discharge of the contract, must be in writing and must be executed by or on behalf of the council.

### Division 2 Prerequisites for tendering

#### 166 Council to decide whether tenders are to be by open tendering or selective tendering

Whenever a council is required by section 55 of the Act to invite tenders before entering into a contract, the council must decide which of the following tendering methods is to be used—

- (a) the open tendering method by which tenders for the proposed contract are invited by public advertisement,
- (b) the selective tendering method by which invitations to tender for a particular proposed contract are made following a public advertisement asking for expressions of interest,
- (c) the selective tendering method by which recognised contractors selected from a list prepared or adopted by the council are invited to tender for proposed contracts of a particular kind.

**167 Open tendering**

- (1) A council that decides to use the open tendering method for a proposed contract must publish an advertisement inviting tenders for the proposed contract—
  - (a) on the website of the council, and
  - (b) in any other manner that the council considers necessary to bring it to the attention of persons who may be interested in tendering for the proposed contract.
- (2) The advertisement must—
  - (a) express the purpose of the proposed contract, and
  - (b) give details of where and when tender documents relating to the proposed contract can be obtained and the purchase price of those documents, and
  - (c) specify the name of a person to whom requests for information concerning the proposed contract may be addressed and how the person can be contacted, and
  - (d) invite any person willing to fulfil the requirements of the proposed contract to submit a tender to the council by the deadline specified in the advertisement.

The deadline must be a specified time on a date that is at least 21 days after the date of publication or first publication of the advertisement.

- (3) The tender documents relating to the proposed contract must comply with section 170.

**168 Selective tendering method by which invitations to tender for proposed contract are made following public advertisement asking for expressions of interest**

- (1) A council that decides to allocate a particular proposed contract using the selective tendering method referred to in section 166(b) must publish an advertisement inviting applications from persons interested in tendering for the proposed contract—
  - (a) on the website of the council, and
  - (b) in any other manner that the council considers necessary to bring it to the attention of persons who may be interested in tendering for the proposed contract.
- (2) Every such advertisement must include—
  - (a) a brief description of the work, goods, facilities, services or property concerned, and
  - (b) the name of a person to whom requests for information concerning the proposed contract may be addressed and how the person can be contacted, and
  - (c) the deadline for submitting applications.

The deadline must be a specified time on a date that is at least 21 days after the date of publication or first publication of the advertisement.

- (3) A council must consider all applications made in response to such an advertisement and, in so doing, must take into account—

- (a) the experience of the applicants in fulfilling the requirements of similar contracts, and
  - (b) the capacity of the applicants to fulfil the requirements of the proposed contract.
- (4) After considering the applications, the council may either—
  - (a) send invitations in writing to all applicants, or such of them as the council thinks will be able to fulfil the requirements of the proposed contract, to tender for the proposed contract, or
  - (b) decline to invite tenders from any of the applicants.
- (5) In inviting tenders from applicants, the council must—
  - (a) invite them to submit tenders to the council by the deadline specified in the invitations, and
  - (b) give details of where and when tender documents relating to the proposed contract can be obtained and the purchase price of those documents.

The deadline must be a specified time on a date that is at least 21 days after the date of the invitation.
- (6) The tender documents relating to the proposed contract must comply with section 170.

**169 Selective tendering method by which recognised contractors listed by council are invited to tender for particular kinds of proposed contracts**

- (1) A council that decides to prepare a list of suitable tenderers for the allocation of proposed contracts of a specified kind using the selective tendering method referred to in section 166(c) must publish an advertisement inviting applications from persons interested in tendering for proposed contracts of that kind—
  - (a) on the website of the council, and
  - (b) in any other manner that the council considers necessary to bring it to the attention of persons who may be interested in tendering for the proposed contract.
- (2) Every such advertisement must include—
  - (a) a brief description of the kind of work, goods, facilities, services or property concerned, and
  - (b) the name of a person to whom requests for information concerning the proposed contracts may be addressed and how the person can be contacted, and
  - (c) the deadline for submitting applications.
- (3) A council must consider all applications made in response to such an advertisement and, in so doing, take into account the experience of the applicants in fulfilling the requirements of, and their capacity to undertake, similar contracts.
- (4) After considering an application under this section, the council may either—
  - (a) list the applicant as a recognised contractor for some or all of the kinds of work, goods, facilities, services or property specified in the application, or
  - (b) reject the application in whole or part.
- (5) In seeking tenders for a particular proposed contract, a council may invite some or all of the recognised contractors listed by it under this section to tender for that contract and may do so on the basis of—
  - (a) their capacity to fulfil the requirements of that contract, and



- (b) the number of occasions on which each contractor has previously been invited to tender for similar proposed contracts.
- (6) In inviting tenders for a proposed contract from recognised contractors listed by the council under this section, the council must—
  - (a) invite them to submit tenders to the council by the deadline specified in the invitations, and
  - (b) give details of where and when tender documents relating to the proposed contract can be obtained and the purchase price of those documents.

The deadline must be a specified time on a date that is at least 21 days after the date of the invitation.
- (7) The tender documents relating to the proposed contract must comply with section 170.
- (8) As an alternative to listing persons as recognised contractors in accordance with subsections (1)–(4), a council may adopt a list of contractors prepared by another public authority, but only if the list was prepared by the authority following the publication of an advertisement similar to that provided for under subsection (1).
- (9) If a council adopts such a list, the persons whose names appear on the list are taken to be recognised contractors for the kinds of work, goods, facilities, services or property specified in the list.
- (10) A person who is a contractor recognised by a council ceases to be so recognised if the person informs the council in writing that the person no longer wishes to be listed as a recognised contractor for the purposes of this section.
- (11) Nothing in this section requires a council to take the action referred to in subsection (1) on each occasion that it decides to invite tenders under this section.

#### 170 Tender documents

- (1) The tender documents relating to a proposed contract must—
  - (a) give details of the work to be carried out, the goods or facilities to be provided, the services to be performed or the property to be disposed of and, if the proposed contract is an instalment contract—
    - (i) give details of the instalments to be paid by or to the council, and
    - (ii) specify the period over which the instalments are to be paid, and
    - (iii) specify the intervals between payment of the instalments, and
  - (b) specify the criteria on which the assessment of tenders will be based, and
  - (c) specify the name of a person to whom requests for information concerning the proposed contract may be addressed and how the person can be contacted, and
  - (d) indicate whether formal tender documents must be submitted in relation to the tender and, if so, how they may be obtained, and
  - (e) if the proposed contract is for the performance of domestic or other waste management services of the same kind as those performed under a contract in force immediately before the tenders are invited (an *existing contract*)—specify the information which must be submitted about the continuity of employment of workers employed or engaged by the contractor under the existing contract to perform the domestic or other waste management services (the *existing workers*).
- (1A) Without limiting subsection (1)(e), information that must be submitted is—

- (a) a statement as to whether or not the proposed contractor intends to offer the existing workers employment or engagement with the contractor if the tender is accepted, and
  - (b) if employment or engagement is offered—relevant details of the terms and conditions of employment or engagement that will be offered (including details of remuneration, preservation of accrued or accruing leave and other entitlements, hours of work, working conditions and rights to negotiate working conditions under the *Industrial Relations Act 1996*, the conduct of training with respect to industrial rights and occupational health and safety, duration of the employment or engagement and rights with respect to trade union membership).
- (2) If a council amends tender documents after they have been issued to persons, it must take all reasonably practicable steps to inform those persons of the amendments.
- (4) In this section—  
*domestic or other waste management services* means the storage, treatment, processing, collecting, removal, disposal, destruction, sorting or recycling of domestic waste and other waste.

#### **171 Shortened tender period**

- (1) A council that believes there are exceptional circumstances rendering inappropriate a deadline that would, but for this section, be required to be specified in an advertisement under section 167, 168 or 169 or an invitation under section 168(4) or 169(6) may decide on an earlier deadline. However, the earlier deadline must be a specified time on a date that is at least 7 days after—
- (a) the date of the publication or first publication of the advertisement, or
  - (b) the date of the invitation.
- (2) A council must keep a record of—
- (a) the circumstances requiring an earlier deadline to be specified in such an advertisement or invitation, and
  - (b) the name of the staff member who made the decision to change the deadline (if not made by the council).

#### **172 Extended tender period**

- (1) If, having specified or included a deadline in an advertisement under section 167, 168 or 169 or an invitation under section 168(4) or 169(6), a council becomes aware of circumstances that show that the deadline may not allow enough time for meaningful tenders or applications to be submitted, it may extend the deadline by specifying a later deadline.
- (2) If, at the time of extending the deadline, the council has issued invitations to persons under section 168(4) or 169(6) or has issued tender documents to persons, it must take all reasonably practicable steps to inform those persons of the later deadline.
- (3) A council must keep a record of—
- (a) the circumstances requiring a later deadline to be specified in an advertisement or invitation, and
  - (b) the name of the staff member who made the decision to change the deadline (if not made by the council).

### **Division 3 Submission and opening of tenders**

#### **173 Submission of tenders**

- (1) A tender must be submitted in writing, by facsimile transmission or (subject to subsection (2)) by electronic means.
- (2) A tender may not be submitted by electronic means—
  - (a) if guidelines are in force under section 23A of the Act with respect to the transmission of tenders by electronic means—unless its submission by electronic means is authorised by, and effected in accordance with, those guidelines, and
  - (b) in any other case—unless its submission by electronic means is effected by a secure mechanism (such as an encryption-based technology) that ensures that it cannot subsequently be altered.
- (3) Unless sent by facsimile transmission or electronic means, a tender must be sent or delivered in a sealed envelope.
- (4) If a tender is sent by facsimile transmission or electronic means (other than the means referred to in subsection (2)(b)), it must be printed out on receipt, and an appropriate person must place the tender in a sealed envelope immediately after it is printed out.

#### **174 Custody of tenders after receipt**

- (1) A council must—
  - (a) provide a secure tender box, and
  - (b) ensure that—
    - (i) all tenders (except the tenders received by electronic means that have not been printed out, but including those received by facsimile transmission) submitted to it for a proposed contract are kept in the tender box, and
    - (ii) the tender box, when containing tenders, is kept in a safe and secure place,  
until the envelopes containing the tenders are opened in accordance with section 175.
- (2) A council must ensure that, whenever the council's office is open for business, its tender box is kept in a place that allows tenderers who wish to do so to deposit their tenders personally.
- (3) Tenders received by electronic means as referred to in section 173(2)(b) must be stored on an information system (within the meaning of the *Electronic Transactions Act 2000*) in such a manner (whether by means of password protection or otherwise) that they are accessible only to an appropriate person.

#### **175 Opening of tenders**

- (1) At the time specified for the close of tenders, the appropriate person must open the tenders in the presence of—
  - (a) at least 2 persons designated by the general manager for the purpose, and
  - (b) such tenderers and members of the public as wish to attend the opening.
- (2) A member of the public who attends the opening of tenders for a proposed contract is entitled, on request, to be informed as to whether the council has received a particular tender and the number of tenders received.

- (3) As soon as practicable after the tenders for a proposed contract have been opened, the appropriate person—
  - (a) must record the names of the tenderers and the amounts that appear to have been tendered for the contract, and
  - (b) must prepare a tender list specifying the names of the tenderers in alphabetical order.
- (4) Immediately after preparing a tender list, the appropriate person must display the list in a place where it can be readily seen by members of the public. That person may add to the list such information as he or she considers appropriate.

#### **176 Tenders may be varied in certain circumstances**

- (1) At any time before a council accepts any of the tenders that it has received for a proposed contract, a person who has submitted a tender may, subject to subsection (2), vary the tender—
  - (a) by providing the council with further information by way of explanation or clarification, or
  - (b) by correcting a mistake or anomaly.
- (2) Such a variation may be made either—
  - (a) at the request of the council, or
  - (b) with the consent of the council at the request of the tenderer, but only if, in the circumstances, it appears to the council reasonable to allow the tenderer to provide the information or correct the mistake or anomaly.
- (3) If a tender is varied in accordance with this section, the council must provide all other tenderers whose tenders have the same or similar characteristics as that tender with the opportunity of varying their tenders in a similar way.
- (4) A council must not consider a variation of a tender made under this section if the variation would substantially alter the original tender.
- (5) A council must keep a record of—
  - (a) the circumstances requiring the variation of a tender, and
  - (b) the name of the staff member handling the matter.

### **Division 4 Determination of successful tenderer**

#### **177 Consideration of tenders**

- (1) As soon as practicable after the tenders for a proposed contract have been opened, the council must assess the tenders.
- (2) A council must not consider a tender that is not submitted to the council by the deadline for the closing of tenders. This subsection is subject to subsections (4) and (5).
- (3) A council must consider a tender transmitted to it by facsimile machine or electronic means, but only if—
  - (a) in the case of transmission by electronic means, that means of transmission was specified in the relevant tender documents, and
  - (b) the transmission was received before the deadline for the closing of tenders, and
  - (c) the tender is complete.

- (4) However, if a council has specified in the relevant tender documents issued by the council that a tender will not be considered unless formal tender documents are submitted to the council, then (despite subsection (3)), the council is not obliged to consider a tender transmitted to it in accordance with that subsection (being a tender that does not include formal tender documents) unless—
  - (a) the tenderer is able to satisfy the council that formal tender documents and all other requisite essential information were posted or lodged at a Post Office or other recognised delivery agency before the deadline for the closing of tenders, and
  - (b) the council actually receives those documents within such period as it decides to be reasonable in the circumstances.
- (5) A council must also consider a tender received within such period after the deadline for the closing of tenders as it decides to be reasonable in the circumstances if the tenderer satisfies the council that the tender documents and all other requisite essential information were posted or lodged at a Post Office or other recognised delivery agency in sufficient time to enable the documents to have been received by the council in the ordinary course of business before that deadline.

#### **178 Acceptance of tenders**

- (1) After considering the tenders submitted for a proposed contract, the council must either—
  - (a) accept the tender that, having regard to all the circumstances, appears to it to be the most advantageous, or
  - (b) decline to accept any of the tenders.
- (1A) Without limiting subsection (1), in considering the tenders submitted for a proposed contract for the performance of domestic or other waste management services, the council must take into account whether or not existing workers (within the meaning of section 170) will be offered employment or engagement on terms and conditions comparable to those applicable to the workers immediately before the tender was submitted.
- (2) A council must ensure that every contract it enters into as a result of a tender accepted by the council is with the successful tenderer and in accordance with the tender (modified by any variation under section 176). However, if the successful tender was made by the council (as provided for in section 55(2A) of the Act), the council is not required to enter into any contract in order to carry out the requirements of the proposed contract.
- (3) A council that decides not to accept any of the tenders for a proposed contract or receives no tenders for the proposed contract must, by resolution, do one of the following—
  - (a) postpone or cancel the proposal for the contract,
  - (b) invite, in accordance with section 167, 168 or 169, fresh tenders based on the same or different details,
  - (c) invite, in accordance with section 168, fresh applications from persons interested in tendering for the proposed contract,
  - (d) invite, in accordance with section 169, fresh applications from persons interested in tendering for contracts of the same kind as the proposed contract,
  - (e) enter into negotiations with any person (whether or not the person was a tenderer) with a view to entering into a contract in relation to the subject matter of the tender,
  - (f) carry out the requirements of the proposed contract itself.

- (4) If a council resolves to enter into negotiations as referred to in subsection (3)(e), the resolution must state the following—
- (a) the council's reasons for declining to invite fresh tenders or applications as referred to in subsection (3)(b)–(d),
  - (b) the council's reasons for determining to enter into negotiations with the person or persons referred to in subsection (3)(e).

**179 Notification of acceptance of successful tender**

As soon as practicable after entering into a contract in accordance with section 178 or deciding not to accept any of the tenders for a proposed contract, a council must—

- (a) send to all tenderers whose tenders were not accepted notices to the effect that their tenders were unsuccessful or, as the case may be, that none of the tenders for the proposed contract was accepted, and
- (b) display in a conspicuous place that is accessible to members of the public a notice specifying the name of the tenderer whose tender was accepted and the amount of the successful tender or, if none of the tenders was accepted, a notice to that effect.

## Part 8 Conduct

### 180 Content of model code of conduct

- (1) For the purposes of section 440(1) of the Act, the document entitled *Model Code of Conduct for Local Councils in NSW* published in the Gazette on 7 August 2020 is prescribed as the model code of conduct applicable to councillors, members of staff of councils and delegates of councils.
- (2) For the purposes of section 440(2) of the Act, the provisions of that document published in the Gazette on 7 August 2020 relating to the disclosure of pecuniary interests are also to apply to the following persons—
  - (a) a member of a committee of the council (including the Audit, Risk and Improvement Committee),
  - (b) an adviser to the council.

### 181 Model procedure for administering the model code of conduct

For the purposes of section 440AA(1) of the Act, the document entitled *Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW* published in the Gazette on 7 August 2020 is prescribed as the model procedure for administering the model code.

### 182 Acts of disorder

For the purposes of section 490A of the Act, a councillor commits an act of disorder if the councillor, at a meeting of a council or a committee of a council—

- (a) contravenes the Act, this Regulation or any provision of the code of meeting practice adopted by the council under section 360(3) of the Act, including any provisions incorporated in the adopted code that are prescribed by this Regulation as mandatory provisions of the model code of meeting practice, or
- (b) assaults or threatens to assault another councillor or person present at the meeting, or
- (c) moves or attempts to move a motion or an amendment that has an unlawful purpose or that deals with a matter that is outside the jurisdiction of the council or committee, or addresses or attempts to address the council or committee on such a motion, amendment or matter, or
- (d) insults, makes unfavourable personal remarks about, or imputes improper motives to, any other councillor or a member of staff or delegate of a council, or
- (e) says or does anything that is inconsistent with maintaining order at the meeting or is likely to bring the council or committee into contempt.

## **Part 8A Induction training and professional development for councillors**

### **183 Induction training courses for councillors**

- (1) The general manager must ensure that an induction training course is delivered to each councillor who has been elected to the council for the first time, within 6 months of the councillor's election.
- (2) The induction training course required by subsection (1) must provide councillors with information about the functions and obligations of councils and councillors and the administrative procedures and operations of the council.
- (3) The general manager must ensure that an induction refresher course is delivered to each councillor who is re-elected to the council, within 6 months of the councillor's re-election.
- (4) The induction refresher course required by subsection (3) must provide councillors with updated information about the functions and obligations of councils and councillors and the administrative procedures and operations of the council.
- (5) A councillor must make all reasonable efforts to participate in any induction training course or induction refresher course delivered to the councillor in accordance with a requirement under this section.

### **184 Supplementary induction training courses for mayors**

- (1) The general manager must ensure that a supplementary induction training course is delivered to a person elected as mayor of the council, within 6 months of the person's election.
- (2) The supplementary induction training course required by subsection (1) must provide the mayor with information about the functions and obligations of councils and mayors and train the mayor in the skills necessary to perform the role of mayor.
- (3) A mayor must make all reasonable efforts to participate in any supplementary induction training course delivered to the mayor in accordance with a requirement under this section.
- (4) The requirements under this section in relation to a person elected as mayor are in addition to the requirements under section 183 to ensure the delivery of the induction training for councillors to that person.

### **185 Ongoing professional development program for councillors and mayors**

- (1) The general manager must ensure that an ongoing professional development program is delivered to the mayor and to each other councillor elected to the council, during the course of the term of office of the mayor or councillor concerned.
- (2) The ongoing professional development program required by this section—
  - (a) must provide support and assistance to mayors and other councillors in the development of the skills necessary to perform the role of mayor or councillor (as the case may be), and
  - (b) must ensure that those skills are maintained over the term of office of the mayor and of each councillor.
- (3) The content of the ongoing professional development program required by this section is to be developed—
  - (a) in consultation with the mayor and each councillor, and



- (b) having regard to the specific skills required by the mayor, each individual councillor and the governing body of the council as a whole to perform the role of mayor, councillor or the governing body (as the case may be).
- (4) A mayor or other councillor must make all reasonable efforts to participate in any ongoing professional development program delivered to the mayor or councillor in accordance with a requirement under this section.

**186 Information about induction training and ongoing professional development to be included in annual report**

For the purposes of section 428(4)(b) of the Act, an annual report of a council must include the following information—

- (a) the names of any mayors or councillors who completed any induction training course, induction refresher course or supplementary induction course under this Part during the year,
- (b) the names of any mayors or councillors who participated in any ongoing professional development program under this Part during the year,
- (c) the number of seminars, circulars and other activities delivered as part of the ongoing professional development program in accordance with this Part during the year.

**Note.** Section 217(1)(a1)(iia) and (iv) require details of the total costs of all training and professional development programs for councillors to be included in an annual report.

## Part 9 Management and accountability

### Division 1 Preliminary

#### 196 Definitions

In this Part—

**accounting records** of a council means the records that section 412 of the Act requires the council to keep, and includes any cash receipt record, assets register, contracts register, stores register or ledger, debtors' ledger and creditors' ledger.

**Code** means the *Local Government Code of Accounting Practice and Financial Reporting* published by the Department, as in force from time to time.

**estimate** includes any sub-estimate that an estimate is required to contain.

**Manual** means the *Local Government Asset Accounting Manual* published by the Department, as in force from time to time.

**quarter** means the period of 3 months ending on 30 September, 31 December, 31 March or 30 June.

**records** includes books, registers, deeds and documents, and any other sources of information compiled, recorded or stored in written form or on microfilm, or by electronic process, or in any other manner or by any other means.

**responsible accounting officer** of a council means—

- (a) a member of the staff of the council designated by the general manager, or
- (b) if no such member has been designated, the general manager.

### Division 1A Strategic planning

#### 196A Integrated planning and reporting guidelines—the Act, s 406

A council must comply with the integrated planning and reporting guidelines in the document entitled *Integrated Planning and Reporting Guidelines for Local Government in NSW*, published on the website of the Department, as in force from time to time.

### Division 3 Budgeting by councils

#### 202 Responsible accounting officer to maintain system for budgetary control

The responsible accounting officer of a council must—

- (a) establish and maintain a system of budgetary control that will enable the council's actual income and expenditure to be monitored each month and to be compared with the estimate of the council's income and expenditure, and
- (b) if any instance arises where the actual income or expenditure of the council is materially different from its estimated income or expenditure, report the instance to the next meeting of the council.

#### 203 Budget review statements and revision of estimates

- (1) Not later than 2 months after the end of each quarter (except the June quarter), the responsible accounting officer of a council must prepare and submit to the council a budget review statement that shows, by reference to the estimate of income and expenditure set out in the statement of the council's revenue policy included in the operational plan for the relevant year, a revised estimate of the income and expenditure for that year.
- (2) A budget review statement must include or be accompanied by—

- (a) a report as to whether or not the responsible accounting officer believes that the statement indicates that the financial position of the council is satisfactory, having regard to the original estimate of income and expenditure, and
  - (b) if that position is unsatisfactory, recommendations for remedial action.
- (3) A budget review statement must also include any information required by the Code to be included in such a statement.

#### **Division 4 Councils' funds**

##### **204 Council to establish and maintain accounts with authorised deposit-taking institutions**

A council must establish and maintain at least one account with an authorised deposit-taking institution for its consolidated fund and at least one account with an authorised deposit-taking institution for its trust fund.

##### **205 Withdrawal of certain money**

A council must ensure that the following classes of money are withdrawn for use only for the purpose for which it is held or for investment in accordance with section 625 of the Act—

- (a) money that the council must set aside to repay the principal outstanding on loans made to the council on interest-only terms,
- (b) money lent to the council not yet expended for the purpose for which the money was obtained,
- (c) money that the council must set aside to meet outstanding claims to be met by the council under any self-insurance scheme that the council operates.

**Note.** Section 409(3) of the Act contains requirements in respect of the use of other classes of money. Those classes are—

- (a) money received as a result of levying a special rate or charge,
- (b) money that is, by the provisions of an Act, required to be set aside for a specific purpose,
- (c) money received from the Government or a public authority for a specific purpose.

Section 625 of the Act specifies the way in which a council may invest its surplus funds.

#### **Division 5 Accounting records and accounting practices**

##### **206 Accounting records and accounting practices to accord with the Code**

- (1) A council's accounting records must be kept in a form that accords with the Code.
- (2) A council's accounting practices must accord with the Code.

**Note.** Section 412 of the Act contains the general requirements for the keeping of a council's accounting records.

##### **207 Responsibility for accounting records**

- (1) The responsible accounting officer of a council is responsible for keeping the council's accounting records.
- (2) The responsible accounting officer must ensure that the accounting records are kept up-to-date and in an accessible form.
- (3) The responsible accounting officer must take all reasonable measures to ensure that—
  - (a) all money payable to the council is collected or recovered promptly, and

- (b) appropriate arrangements are implemented for the security and banking of money received by the council, and
- (c) the assets of or under the control of the council are properly accounted for, and
- (d) liabilities are incurred by the council only with the authority of the council and the council's funds are properly spent in meeting those liabilities, and
- (e) appropriate budgeting and accounting systems (including internal control systems) are established and maintained for the purposes of the council, and
- (f) adequate measures are taken to protect the council's valuable securities and accounting records from loss, destruction, damage and theft.

#### **208 Production of accounting records**

A member of the staff of a council who has control of any of the council's accounting records must—

- (a) produce those records for inspection and audit in proper order whenever directed or requested to do so by the council's mayor, responsible accounting officer, general manager (if not the council's responsible accounting officer) or auditor or by the Secretary or a person to whom the Secretary's functions under section 430 of the Act have been delegated or subdelegated under section 745 of the Act, and
- (b) render all practicable assistance to the mayor, responsible accounting officer, general manager, auditor, the Secretary or such a delegate or subdelegate with respect to those records.

#### **209 Particular responsibilities of the general manager**

The general manager of a council must ensure that—

- (a) the provisions of the Act, this Regulation and any other written law relating to councils' financial obligations or the keeping of accounts by councils are complied with, and
- (b) effective measures are taken to secure the effective, efficient and economical management of financial operations within each division of the council's administration, and
- (c) authorising and recording procedures are established to provide effective control over the council's assets, liabilities, revenue and expenditure and secure the accuracy of the accounting records, including a proper division of accounting responsibilities among the council's staff, and
- (d) lines of authority and the responsibilities of members of the council's staff for related tasks are clearly defined.

#### **210 Council to rectify defects in internal control systems**

On becoming aware—

- (a) that the systems for properly accounting for the receipt, investment, handling or expenditure of money by a council are defective or inadequate, or
- (b) that the existing systems established for those purposes are not being complied with,

the Secretary may, by notice in writing served on the council, direct the council to remedy the defect or inadequacy, or to comply with the existing systems. The council must comply with such a direction.

**Note.** Failure to comply with a direction under this section may lead to an investigation being held under Part 5 of Chapter 13 of the Act.

### **211 Authorisation of expenditure**

- (1) A council, or a person purporting to act on behalf of a council, must not incur a liability for the expenditure of money unless the council at the annual meeting held in accordance with subsection (2) or at a later ordinary meeting—
  - (a) has approved the expenditure, and
  - (b) has voted the money necessary to meet the expenditure.
- (2) A council must each year hold a meeting for the purpose of approving expenditure and voting money.
- (3) All such approvals and votes lapse at the end of a council's financial year. However, this subsection does not apply to approvals and votes relating to—
  - (a) work carried out or started, or contracted to be carried out, for the council, or
  - (b) any service provided, or contracted to be provided, for the council, or
  - (c) goods or materials provided, or contracted to be provided, for the council, or
  - (d) facilities provided or started, or contracted to be provided, for the council,before the end of the year concerned, or to the payment of remuneration to members of the council's staff.

### **212 Reports on council investments**

- (1) The responsible accounting officer of a council—
  - (a) must provide the council with a written report (setting out details of all money that the council has invested under section 625 of the Act) to be presented—
    - (i) if only one ordinary meeting of the council is held in a month, at that meeting, or
    - (ii) if more than one such meeting is held in a month, at whichever of those meetings the council by resolution determines, and
  - (b) must include in the report a certificate as to whether or not the investment has been made in accordance with the Act, the regulations and the council's investment policies.
- (2) The report must be made up to the last day of the month immediately preceding the meeting.

**Note.** Section 625 of the Act specifies the way in which a council may invest its surplus funds.

### **213 Restrictions on writing off debts to a council**

- (1) This section does not apply to amounts owed to a council for rates or other charges for which the Act, or any other regulation in force under the Act, makes specific provision for writing off those amounts in specified circumstances.
- (2) A council must from time to time, by resolution, fix an amount above which debts to the council may be written off only by resolution of the council.
- (3) A debt of or below that amount can be written off either by resolution of the council or by order in writing of the council's general manager. In the absence of a resolution under subsection (2), the council's debts can be written off only by resolution of the council.
- (4) A resolution or order writing off a debt to a council must—
  - (a) specify the name of the person whose debt is being written off, and
  - (b) identify the account concerned, and
  - (c) specify the amount of the debt,or must refer to a record kept by the council in which those particulars are recorded.

- (5) A debt can be written off under this section only—
  - (a) if the debt is not lawfully recoverable, or
  - (b) as a result of a decision of a court, or
  - (c) if the council or the general manager believes on reasonable grounds that an attempt to recover the debt would not be cost effective.
- (6) The fact that a debt is written off under this section does not prevent the council concerned from taking legal proceedings to recover the debt.

## **Division 6 Annual financial reports**

### **214 Additional requirements for preparation of a council's financial reports**

- (1) For the purpose of section 413(2)(b) of the Act, any matters required by the Code or the Manual to be included in a council's financial reports are prescribed matters.
- (2) For the purpose of section 413(3)(b) of the Act, the Code and the Manual are prescribed standards.

### **215 Statement by a council on its annual financial reports**

- (1) The statement required by section 413(2)(c) of the Act must—
  - (a) be made by resolution of the council, and
  - (b) be signed by—
    - (i) the mayor, and
    - (ii) at least one other member of the council, and
    - (iii) the responsible accounting officer, and
    - (iv) the general manager (if not the responsible accounting officer).
- (2) The statement must indicate—
  - (a) whether or not the council's annual financial reports have been drawn up in accordance with—
    - (i) the Act and this Regulation, and
    - (ii) the Code and the Manual, and
    - (iii) the *Australian Accounting Standards* issued by the Australian Accounting Standards Board, and
  - (b) whether or not those reports present fairly the council's financial position and operating result for the year, and
  - (c) whether or not those reports accord with the council's accounting and other records, and
  - (d) whether or not the signatories know of anything that would make those reports false or misleading in any way,  
and include such information and explanations as will prevent those reports from being misleading because of any qualification that is included in the statement.
- (3) The council must ensure that the statement is attached to the relevant annual financial reports.

### **216 Council's annual financial reports to be amended in certain cases**

- (1) If the Secretary, by notice in writing served on a council, directs the council to amend its annual financial reports in a way specified in the notice, the council must comply with the direction as soon as practicable after service of the notice.

- (2) A council that amends its annual financial reports to give effect to such a direction must give public notice of the amendment—
  - (i) on the website of the council, and
  - (ii) in any other manner that the council considers necessary to bring it to the attention of members of the public in the area of the council.
- (3) The council must specify in the notice where the amended financial reports are available for inspection.

## **Division 7 Annual reports**

### **Subdivision 1 Additional information—general**

#### **217 Additional information for inclusion in annual report**

- (1) For the purposes of section 428(4)(b) of the Act, an annual report of a council is to include the following information—
  - (a) details (including the purpose) of overseas visits undertaken during the year by councillors, council staff or other persons while representing the council (including visits sponsored by other organisations),
  - (a1) details of the total cost during the year of the payment of the expenses of, and the provision of facilities to, councillors in relation to their civic functions (as paid by the council, reimbursed to the councillor or reconciled with the councillor), including separate details on the total cost of each of the following—
    - (i) the provision during the year of dedicated office equipment allocated to councillors on a personal basis, such as laptop computers, mobile telephones and landline telephones and facsimile machines installed in councillors' homes (including equipment and line rental costs and internet access costs but not including call costs),
    - (ii) telephone calls made by councillors, including calls made from mobile telephones provided by the council and from landline telephones and facsimile services installed in councillors' homes,
    - (iii) the attendance of councillors at conferences and seminars,
    - (iiia) the provision of induction training for councillors, supplementary induction training for mayors and professional development programs for mayors and other councillors,
    - (iv) other training of mayors and councillors and the provision of skill development for mayors and councillors,
    - (v) interstate visits undertaken during the year by councillors while representing the council, including the cost of transport, the cost of accommodation and other out-of-pocket travelling expenses,
    - (vi) overseas visits undertaken during the year by councillors while representing the council, including the cost of transport, the cost of accommodation and other out-of-pocket travelling expenses,
    - (vii) the expenses of any spouse, partner or other person who accompanied a councillor in the performance of his or her civic functions, being expenses payable in accordance with the *Guidelines for the payment of expenses and the provision of facilities for Mayors and Councillors for Local Councils in NSW* prepared by the Secretary from time to time,
    - (viii) expenses involved in the provision of care for a child of, or an immediate family member of, a councillor, to allow the councillor to undertake his or her civic functions,

- (a2) details of each contract awarded by the council during that year (whether as a result of tender or otherwise) other than—
  - (i) employment contracts (that is, contracts of service but not contracts for services), and
  - (ii) contracts for less than \$150,000 or such other amount as may be prescribed by the regulations,  
including the name of the contractor, the nature of the goods or services supplied by the contractor and the total amount payable to the contractor under the contract,
- (a3) a summary of the amounts incurred by the council during the year in relation to legal proceedings taken by or against the council (including amounts, costs and expenses paid or received by way of out of court settlements, other than those the terms of which are not to be disclosed) and a summary of the state of progress of each legal proceeding and (if it has been finalised) the result,
- (a4) details or a summary (as required by section 67(3) of the Act) of resolutions made during that year under section 67 of the Act concerning work carried out on private land and details or a summary of such work if the cost of the work has been fully or partly subsidised by the council, together with a statement of the total amount by which the council has subsidised any such work during that year,
- (a5) the total amount contributed or otherwise granted under section 356 of the Act,
- (a6) a statement of all external bodies that during that year exercised functions delegated by the council,
- (a7) a statement of all corporations, partnerships, trusts, joint ventures, syndicates or other bodies (whether or not incorporated) in which the council (whether alone or in conjunction with other councils) held a controlling interest during that year,
- (a8) a statement of all corporations, partnerships, trusts, joint ventures, syndicates or other bodies (whether or not incorporated) in which the council participated during that year,
- (a9) a statement of the activities undertaken by the council during that year to implement its equal employment opportunity management plan,
- (b) a statement of the total remuneration comprised in the remuneration package of the general manager during the year that is to include the total of the following—
  - (i) the total value of the salary component of the package,
  - (ii) the total amount of any bonus payments, performance payments or other payments made to the general manager that do not form part of the salary component of the general manager,
  - (iii) the total amount payable by the council by way of the employer's contribution or salary sacrifice to any superannuation scheme to which the general manager may be a contributor,
  - (iv) the total value of any non-cash benefits for which the general manager may elect under the package,
  - (v) the total amount payable by the council by way of fringe benefits tax for any such non-cash benefits,
- (c) a statement of the total remuneration comprised in the remuneration packages of all senior staff members (other than the general manager) employed during the year, expressed as the total remuneration of all the senior staff members concerned (not of the individual senior staff members) and including totals of each of the following—



- (i) the total of the values of the salary components of their packages,
  - (ii) the total amount of any bonus payments, performance payments or other payments made to them that do not form part of the salary components of their packages,
  - (iii) the total amount payable by the council by way of the employer's contribution or salary sacrifice to any superannuation scheme to which any of them may be a contributor,
  - (iv) the total value of any non-cash benefits for which any of them may elect under the package,
  - (v) the total amount payable by the council by way of fringe benefits tax for any such non-cash benefits,
- (e) if the council has levied an annual charge for stormwater management services—a statement detailing the stormwater management services provided by the council during that year,
- (e1) if the council has levied an annual charge for coastal protection services—a statement detailing the coastal protection services provided by the council during that year,
- (f) a detailed statement, prepared in accordance with such guidelines as may be issued by the Secretary from time to time, of the council's activities during the year in relation to enforcing, and ensuring compliance with, the provisions of the *Companion Animals Act 1998* and the regulations under that Act.

## **Division 8 County councils**

### **218 Application of planning and reporting provisions to county councils**

Part 2 (Strategic planning) of Chapter 13 of the Act applies to county councils with the following exceptions and modifications—

- (a) section 402 (Community strategic plan) does not apply to county councils,
- (b) each county council is required to have a business activity strategic plan as provided by section 219,
- (c) a reference in a provision of that Part to a community strategic plan is (in the application of the provision to and in respect of a county council) to be read as a reference to a business activity strategic plan.

### **219 Business activity strategic plan of county council**

- (1) A business activity strategic plan is a plan developed and endorsed by a county council that—
- (a) identifies the main business activity priorities of the council covering a period of at least 10 years from when the plan is endorsed, and
  - (b) establishes strategic objectives together with strategies for achieving those objectives, and
  - (c) has been developed having due regard to the community strategic plans of the county council's constituent councils and in consultation with those councils.
- (2) Following an ordinary election of councillors for the constituent councils of a county council, the county council must review the business activity strategic plan before 30 June following the election. The council may endorse the existing plan, endorse amendments to the existing plan or develop and endorse a new business activity strategic plan, as appropriate to ensure that the council has a business activity strategic plan covering at least the next 10 years.

- (3) Within 28 days after a business activity strategic plan is endorsed, the council must post a copy of the plan on the council's website and provide a copy to the Secretary. A copy of a business activity strategic plan may be provided to the Secretary by notifying the Minister of the appropriate URL link to access the plan on the council's website.

## **Division 9      Miscellaneous**

### **227    Matters to be taken into consideration by auditor**

For the purposes of section 415(3) of the Act, the matters that an auditor must consider and provide comment on in auditing a council's financial reports are the matters that the Code requires an auditor to consider and provide comment on.

### **228    Half-yearly inspection of council's accounting records**

- (1) For the purposes of section 426(1)(b) of the Act, the prescribed periods are after the first 6 months of each financial year.
- (2) The responsible accounting officer of a council must—
  - (a) ensure that, within 1 month after the first 6 months of each financial year, the council's ledgers are balanced and a list of ledger balances is prepared so as to enable the council's auditor to conduct a six-monthly inspection of the council's accounting records, and
  - (b) as soon as practicable afterwards, notify the council's auditor that those records are available for inspection.

### **229    Loans to council to be charge on the council's income**

The repayment of money borrowed by a council (whether by way of overdraft or otherwise), and the payment of any interest on that money, is a charge on the income of the council.

### **230    General manager to notify borrowings to Secretary**

- (1) Within 7 days after a council borrows money under a loan contract, the general manager must notify the Secretary of the borrowing.
- (2) This section extends to further advances made to a council under an existing loan contract, but does not apply to a borrowing by a council by way of overdraft.

## Part 10 Meetings

### 232 Model code of meeting practice

For the purposes of section 360 of the Act, the document entitled *Model Code of Meeting Practice for Local Councils in NSW* published in the Gazette on 14 December 2018 is prescribed as the model code of meeting practice for the conduct of meetings of councils and committees of councils all the members of which are councillors.

### 233 Expulsion for acts of disorder

- (1) The chairperson may require a councillor—
  - (a) to apologise without reservation for an act of disorder referred to in section 182(a), (b) or (e), or
  - (b) to withdraw a motion or an amendment referred to in section 182(c) and, where appropriate, to apologise without reservation, or
  - (c) to retract and apologise without reservation for any statement that constitutes an act of disorder referred to in section 182(d) or (e).
- (2) A councillor may, as provided by section 10(2)(a) or (b) of the Act, be expelled from a meeting of a council for having failed to comply with a requirement under subsection (1). The expulsion of a councillor from the meeting for that reason does not prevent any other action from being taken against the councillor for the act of disorder concerned.
- (3) A person (other than a councillor) may, as provided by section 10(2)(a) or (b) of the Act, be expelled from a meeting of a council for having engaged in disorderly conduct at the meeting.

### 234 Minister to convene meetings in certain cases

- (1) Whenever an area is constituted or reconstituted, the Minister is required—
  - (a) to convene the first meeting of the council of the area, and
  - (b) to nominate the business to be transacted at the meeting, and
  - (c) to give the councillors notice of the meeting.
- (2) If there is no quorum at that meeting, the Minister may convene meetings in the same manner until a quorum is present.
- (3) The council must transact the business nominated by the Minister for a meeting convened under this section.

### 235 Report of Secretary to be tabled at council meeting

When a report of the Secretary or a person to whom the Secretary's functions under section 430 of the Act have been delegated or subdelegated under section 745 of the Act has been presented to a meeting of a council in accordance with section 433 of the Act, the council must ensure that the report—

- (a) is laid on the table at that meeting, and
- (b) is subsequently available for the information of councillors and members of the public at all reasonable times.

### 236 Councils to broadcast meetings online

- (1) Each meeting of a council or council committee is to be recorded by means of an audio or audio visual device.

- (2) The recording is to be made publicly available on the council's website—
  - (a) at the same time as the meeting is taking place, or
  - (b) as soon as practicable after the meeting.
- (3) The recording of a meeting is to be made publicly available on the council's website for at least 12 months after the meeting.
- (4) At the start of each meeting of a council or council committee, the chairperson must inform the persons attending the meeting that—
  - (a) the meeting is being recorded and made publicly available on the council's website, and
  - (b) persons attending the meeting should refrain from making any defamatory statements.
- (5) This section does not apply to—
  - (a) any part of a meeting that has been closed to the public in accordance with section 10A of the Act, or
  - (b) a joint organisation, unless the joint organisation otherwise resolves.
- (6) In this section, *council committee* means a committee of a council all the members of which are councillors.

**237 Exemption from requirement of code of meeting conduct—the Act, Schedule 6, clause 1**

- (1) This section applies to an area if the council for the area has adopted a code of meeting practice that includes model code, clause 5.2.
- (2) An area to which this section applies is exempt from the Act, section 360(5) to the extent that the council, or a committee of the council of which all the members are councillors, is required to comply with the model code, clause 5.2, as adopted by the code of meeting practice.
- (3) This section is repealed on 31 December 2021, at the end of the day.
- (4) In this section—  
*model code* means the code specified in section 232.

## Part 11 Elections

### Division 1 Preliminary

#### 274 Application of Part and associated Schedules

- (1) This Part (except Division 12) applies to the election of the councillors (by ward or area) and the mayor (by area) of an area by the persons entitled to vote in the area.
- (2) Schedules 7–10 do not apply to elections of the kind referred to in subsection (1).
- (3) Division 12 and Schedules 7–10 apply to other matters as specified in Division 12 (ie the election of a mayor or deputy mayor by councillors, the election of the members of, and the chairperson of, a county council and the conduct of constitutional referendums and council polls).

#### 275 Definitions

- (1) In this Part—
  - approved** means approved by the election manager.
  - attendance election** means an election conducted by means of attendance and postal voting.
  - Note.** See section 310B of the Act.
  - authorised copy of a roll**, in relation to an election, means an authorised copy of a roll referred to in section 301(4) of the Act.
  - ballot counting place**—see section 345A(1).
  - close of the poll**, in relation to an election, means 6 pm on the day on which the election is held.
  - closing date**, in relation to an election, means the date prescribed by section 278 for the closing of the roll of electors for the election.
  - Note.** Section 278 provides that the closing date is the fortieth day preceding election day, except where the election is delayed.
  - declared institution** means an institution declared under section 327.
  - declared institutions ballot-box** means the ballot-box reserved for the receipt of declared institution votes.
  - driver licence** means a driver licence or a digital driver licence issued under the *Road Transport Act 2013*.
  - election day** means the day the poll for the election is to be held (in relation to an attendance election), or the last day of voting (in relation to a postal election), if a poll for the election is required.
  - election manager** means—
    - (a) in relation to an election, council poll or constitutional referendum administered by an electoral services provider—a person appointed by the electoral services provider, or
    - (b) in relation to an election, council poll or constitutional referendum administered by the Electoral Commissioner—the Electoral Commissioner.
  - election official** means—
    - (a) a returning officer or substitute returning officer, or
    - (b) an electoral official appointed by the returning officer under section 296A(3) or 296B(3) of the Act.
  - Electoral Commission** means the New South Wales Electoral Commission constituted under the *Electoral Act 2017*.

**electoral paper** includes any written claim or application, any approved form and any other form that relates to an election under the Act.

**electoral services provider** means an electoral services provider engaged by a council under the Act to administer an election, council poll or constitutional referendum.

**general manager** means, in relation to an election or enrolment, the general manager of the council of the area in which the election is being held or of the area to which the enrolment relates.

**last day of voting** in a postal election means the day on which the postal election would be held under Part 4 of Chapter 10 of the Act if it were an attendance election.

**nomination day**, in relation to an election, means the day specified in section 286.

**Photo Card** means a New South Wales Photo Card issued by Transport for NSW under the *Photo Card Act 2005*.

**polling place manager**, in relation to a polling place, means—

- (a) the electoral official appointed by the returning officer under section 296A(3) or 296B(3) of the Act and in charge of the polling place, or
- (b) the returning officer if authorised by the election manager to act as polling place manager at the polling place.

**postal ballot-box** means the ballot-box reserved for the receipt of postal votes.

**postal election** means an election conducted exclusively by means of postal voting.

**Note.** See section 310B of the Act.

**postal vote certificate** means a certificate in the approved form provided to an elector for the purposes of postal voting under Subdivision 1 of Division 7 or voting at postal elections under Division 8A.

**pre-poll ballot-box** means the ballot-box reserved for the receipt of pre-poll votes.

**pre-poll voting office** means a pre-poll voting office appointed under section 298.

**pre-poll voting officer** means—

- (a) the returning officer, or
- (b) an election official assigned by the election manager or returning officer to conduct pre-poll voting.

**provisional vote** means a vote under Subdivision 1A of Division 7.

**registered officer** of a registered political party includes a deputy registered officer of the party.

**registered political party** means a political party registered under Part 7 of Chapter 10 of the Act.

**silent elector** means an elector whose place of living is not included on a roll of electors because of a request made under section 739 of the Act.

- (2) In this Part, a reference to a form by number is a reference to a form contained in Schedule 11.
- (3) In this Part, a reference to the Electoral Commissioner includes a reference to the returning officer where the Commissioner authorises the returning officer to exercise a specified function conferred or imposed on the Commissioner by this Part.
- (4) In this Part, a reference to the election manager's website is a reference to—
  - (a) in relation to an election, council poll or constitutional referendum administered by an electoral services provider—both the council's website and the electoral services provider's website, or

- (b) in relation to an election, council poll or constitutional referendum administered by the Electoral Commissioner—the Electoral Commission’s website.

**275A Functions of election manager**

- (1) The election manager may consult with the council in the exercise of the election manager’s functions under this Part.
- (2) The election manager may use computer and other electronic resources to assist in the conduct and administration of elections under this Part.

**Division 2 Administration**

**276 Election official cannot be candidate**

- (1) A person who is nominated for election to civic office in an area cannot be appointed as a returning officer or other election official in respect of an election in that or any other area.
- (2) A returning officer or other election official ceases to hold office in respect of an election in an area on being nominated for election in that or any other area.

**276A Election official to be on electoral roll**

A person is not qualified for appointment as an election official unless—

- (a) if the person resides in New South Wales—the person is enrolled for an electoral district under the *Electoral Act 2017*, or
- (b) in any other case—the person is enrolled in any other State or Territory of the Commonwealth as an elector for the House of Representatives.

**277 Notice of changes to wards**

- (1) If a council divides its area into wards, abolishes all its wards, alters its ward boundaries or names or renames a ward in its area, the general manager of the council—
  - (a) must notify the Electoral Commissioner in writing, and
  - (b) must publish notice of the change on the council’s website, and
  - (c) may publish notice of the change in any other manner the general manager considers necessary to bring the change to the attention of members of the public in the area.
- (3) If, as a result of the changes referred to in this section, there are any wards that are new or that have altered boundaries, the notice must include a map showing the boundaries of the new wards or boundaries as so altered.

**277A Effect of changes to wards on approaching elections**

**(1) Application of this section**

This section applies if a council divides its area into wards, abolishes all its wards, alters its ward boundaries, or names or renames a ward in its area. Each such action is a *change* for the purposes of this section.

**(2) Effect on approaching election (other than by-election)**

The next election (other than a by-election) held after a change is made is to be held as if the change had not been made if it was made during the period of 10 months before the closing date, unless the Electoral Commissioner otherwise approves in special circumstances.

(3) **Effect on approaching by-election**

A by-election held after a change is made and before the next ordinary election is to be held as if the change had not been made. This subsection does not apply to an alteration of ward boundaries (which is provided for by section 210(6) of the Act).

**277B Advertising by election manager**

(1) **General power to advertise**

The election manager may publish (at such times as the election manager thinks fit) such election information as the election manager thinks fit, including but not limited to—

- (a) information of the fact that an election is to be held, and
- (b) information about—
  - (i) the nomination process for an election, and
  - (ii) entitlements and obligations to vote in an election, and
  - (iii) the location of polling places for the election and who may vote at the respective polling places.

(2) **Types of advertising**

The information may be published on the election manager's website and in any other manner that the election manager considers necessary to bring the information to the attention of members of the public in the area.

(3) **Coverage of advertisement**

A publication of information may relate to one or more areas.

(4) **Relationship of section to other provisions**

This section has effect subject to the specific requirements of sections 280, 288 and 300, but nothing in those sections prevents the election manager from publishing additional notices or information under this section.

**Division 3 Electoral rolls**

**278 Closing date**

- (1) For the purposes of the Dictionary to the Act, *closing date* is defined in this section.
- (2) The closing date in relation to an election or poll is the date of the fortieth day preceding the election day for the election or poll.
- (3) If an election or poll is delayed, the closing date in relation to it is—
  - (a) in the case of a delay occurring before the fortieth day preceding the original election day of the election or poll—the date of the fortieth day preceding the new election day of the election or poll, or
  - (b) in any other case—the date of the fortieth day preceding the original election day.

**279 Form of roll of electors**

The roll of electors kept by the Electoral Commissioner must contain—

- (a) the ward, if any, and area to which the roll relates, and
- (b) the surname, given name or names, date of birth, sex and address of each elector.



## **280 Advertising of enrolments**

- (1) The Electoral Commissioner is to give notice under section 277B of the fact that persons are entitled to vote in an election, constitutional referendum or council poll, and are entitled to be enrolled as electors for a ward or area, if they are residents of the ward or area, or are owners, occupiers, or ratepaying lessees, of rateable land in the ward or area.
- (2) The notice is to invite claims for the inclusion of the names of persons in the roll of electors or for the amendment of any particulars entered in the roll against the names of persons.
- (2A) If the election is a postal election, the notice is also to inform voters how they may apply for the redirection of their postal ballot envelope and the last day when a redirection request may be lodged.
- (3) The notice must be published on the Electoral Commission's website for the period commencing at least 14 days before the closing date for the election, constitutional referendum or council poll and ending at 6 pm on the closing date.
- (4) The notice may also be published in any other manner that the Electoral Commissioner considers necessary to bring the notice to the attention of members of the public in the area.

## **281 Enrolment claims and objections**

- (1) A claim under section 303(1)(a) of the Act for inclusion of a person's name is to be in a form containing the following particulars—
  - (a) whether the claim is being lodged with the Electoral Commissioner or the general manager,
  - (b) the person's full name and full address,
  - (c) the person's date of birth,
  - (d) whether the person is entitled to be enrolled as an elector under the Act and whether the person claims enrolment as a resident of a ward or area, or is an owner, occupier, or ratepaying lessee, of rateable land in a ward or area,
  - (e) the full address of any such rateable land,
  - (f) whether the person is already enrolled in another ward (if any) of the same area,
  - (g) particulars of any relevant nomination of the person under section 270, 271 or 272 of the Act (or section 16 or 16A of the *City of Sydney Act 1988*).
- (2) A claim under section 303(1)(a) of the Act for the amendment of any particulars entered in the roll against a person's name is to be in a form containing the following particulars—
  - (a) whether the claim is being lodged with the Electoral Commissioner or the general manager,
  - (b) the person's full name and full address,
  - (c) particulars of the amendment sought.
- (3) A claim under section 303(1)(a) of the Act is to be signed by the person who lodges it and to contain a statement signed by a witness to the effect that the witness saw the person sign the claim and believes, to the best of the witness's knowledge, that the statements in the claim are true.
- (4) An objection under section 303(1)(b) or (c) of the Act to the inclusion of a name or the inclusion of any particulars against a name is to be in a form containing the following particulars—

- (a) whether the objection is being lodged with the Electoral Commissioner or the general manager,
  - (b) the name or particulars to the inclusion of which the objection is made,
  - (c) the full name and full address of the person lodging the objection,
  - (d) the reasons for the objection.
- (5) An objection under section 303(1)(b) or (c) of the Act is to be signed by the person who lodges it and that signature is to be witnessed by a justice of the peace.

#### **282 Competing claimants for enrolment**

- (1) A general manager who nominates a person under section 272 of the Act must do so on the basis of lots drawn in accordance with this section.
- (2) For the purposes of this section, the general manager writes the names of the claimants who are competing for enrolment in respect of the same parcel of land on similar slips of paper. The general manager then folds the slips so as to prevent the names being seen, mixes them, and draws one slip at random.
- (3) The person to be nominated is the one whose name appears on the slip that is drawn.

#### **283 Supply of forms**

The Electoral Commissioner and general manager are to supply a reasonable number of copies of forms suitable for use for the purposes of section 281 free of charge to any person who applies for them.

#### **284 Request for omission of place of living from roll (non-resident electors)**

For the purposes of section 739 of the Act, the prescribed form of request for the omission or removal of any matter that would disclose or discloses a person's place of living on the roll of electors is Form 1.

#### **284A Provision of enrolment information to candidates**

- (1) At the request of any candidate for an election, the Electoral Commissioner must provide to the candidate, free of charge and in the manner and form determined by the Commissioner, enrolment information consisting of—
  - (a) a list of electors for the candidate's ward or, if the area is not divided into wards, a list of electors for the candidate's area, and
  - (b) their particulars,as appearing in the roll of electors referred to in section 301 of the Act.
- (2) Without limiting subsection (1), the Electoral Commissioner may determine that enrolment information to be provided under this section is to be provided electronically or in electronic form.

#### **284B Use of enrolment information—application of section 51 of Electoral Act 2017**

- (1) The provisions of section 51(1) and (2) (other than section 51(2)(c)) of the *Electoral Act 2017* are adopted in connection with enrolment information provided under section 284A, with modifications so that those provisions as modified are as set out in subsections (2) and (3), including the penalty set out at the end of subsection (2).  
**Note.** Section 748(3) and (4) of the Act provide for the creation of offences in connection with elections and polls by adopting, with such modifications as are necessary, any of the provisions of the *Electoral Act 2017*, and for the penalty for such an offence not to exceed the penalty for the corresponding offence in that Act.

- (2) A person must not use enrolment information that is provided by the Electoral Commissioner under section 284A except for a purpose that is a permitted purpose in relation to the person to whom the information was provided.  
Maximum penalty—1,000 penalty units.
- (3) A permitted purpose is any purpose in connection with an election under the Act.

**284C Prohibition of disclosure or commercial use of enrolment information—application of section 52 of Electoral Act 2017**

- (1) The provisions of section 52 (other than section 52(4)) of the *Electoral Act 2017* are adopted in connection with enrolment information provided under section 284A, with modifications so that those provisions as modified are as set out in subsections (2)–(5), including the penalty set out at the end of this section.  
**Note.** Section 748(3) and (4) of the Act provide for the creation of offences in connection with elections and polls by adopting, with such modifications as are necessary, any of the provisions of the *Electoral Act 2017*, and for the penalty for such an offence not to exceed the penalty for the corresponding offence in that Act.
- (2) For the purposes of this section, enrolment information is protected information in relation to a person if the person knows, or has reasonable grounds for believing, that the information has been provided under section 284A.
- (3) A person must not disclose protected information unless the disclosure would be a use of the information for a permitted purpose under section 284B.
- (4) A person must not use protected information for a commercial purpose.
- (5) Without limiting subsection (4), protected information is used for a commercial purpose if it is sold or offered for sale.  
Maximum penalty—1,000 penalty units.

## **Division 4 Notice of election and nominations**

### **285 Notification of vacancy**

When a civic office in an area becomes vacant, the general manager of the council of the area is to give notice of the vacancy within 7 days—

- (a) to the Secretary and the Chief Executive Officer of Local Government NSW if the vacancy is in the office of a mayor elected by councillors, or
- (b) to the Electoral Commissioner, the Secretary and the Chief Executive Officer of Local Government NSW in any other case.

### **286 Nomination day**

The date of the nomination day for an ordinary election or a by-election is the date of the fifth Wednesday before the day of the election (in relation to an attendance election) or the last day of voting (in relation to a postal election), or such other date as the election manager determines in a particular case.

### **288 Notice of election and call for nomination proposals**

- (1) The election manager must publish notice of an election on the election manager's website for the period commencing at least 1 week before the nomination day and ending at 12 noon on the nomination day.
- (2) The notice must—
  - (a) invite proposals for nomination for the election, and
  - (b) specify where nomination forms may be obtained, and

- (c) specify the date of the nomination day and the approved place, and
  - (d) specify, if a poll for the election is required to be held, whether the election will be conducted by means of attendance and postal voting or conducted exclusively by means of postal voting, and
  - (d1) specify the date when the poll will be held for the election (in relation to an attendance election) or the date for the last day of voting (in relation to a postal election) if more candidates are nominated than the number of councillors to be elected, and
  - (e) give notice of the requirements under the Act for proposals for nomination (including the payment of deposits, the provision of candidate information sheets, the grouping of candidates and the creation of group voting squares).
- (3) The notice may contain any other information that the election manager thinks appropriate.
- (4) The election manager may also publish notice of an election in any other manner the election manager considers necessary to bring the notice to the attention of members of the public in the area.

### **289 Nomination proposals**

- (1) A candidate for election is to be proposed for nomination in a nomination paper—
- (a) in Form 2 by at least 2 proposers (other than the candidate) who are enrolled (at 6 pm on the closing date for the election) in respect of the same ward or area as the one in respect of which the candidate is proposed for nomination, or
  - (b) in Form 3 by the registered officer of a registered political party.
- (2) Each candidate must be proposed on a separate nomination paper.
- (3) A nomination paper is not valid unless the person proposed for nomination in the paper has—
- (a) completed and signed the Form of Consent included in the paper, and
  - (b) completed the candidate information sheet that is required by section 308 of the Act to accompany the nomination.
- (4) A nomination paper is not in Form 2 or 3 unless—
- (a) it has printed on the back, or on an attached sheet, sections 274, 275, 276 and 283 of the Act, and
  - (b) it is accompanied by a candidate information sheet that is in such form that the requirements of section 308(1) of the Act can be satisfied, and
  - (c) if the nomination proposal is for an ordinary election, it is accompanied by a statistical information sheet as specified in those forms.
- (4A) A given name of a candidate specified in a nomination paper as the form in which that name should be printed on the ballot-papers for the election may differ from the candidate's given name as it appears on the roll only to the extent that the given name is specified by—
- (a) an initial standing for that name, or
  - (b) a commonly accepted variation of the name (including an abbreviation or truncation of that name or an alternative form of that name), or
  - (c) a commonly used other name specific to the candidate by which the candidate is usually identified (if the returning officer is satisfied that the proposed name is a commonly used other name specific to the candidate by which the candidate is usually identified).

- (5) A nomination paper is to be made by lodging it with the returning officer by 12 noon on the nomination day.
- (5AA) A nomination paper may be lodged—
  - (a) by personal delivery, or
  - (b) by post, or
  - (c) by transmission by facsimile or email, or
  - (d) through an approved website or online electronic nomination system.
- (5AB) The returning officer may give a receipt on the lodgment of a nomination paper and must give a receipt if asked to do so.
- (5A) A nomination paper is not validly transmitted by email unless—
  - (a) an image of the completed nomination paper signed by the proposers and the person proposed for nomination is included in or attached to the email, and
  - (b) that image includes an image of the actual signatures as appearing on the nomination paper.
- (5B) The returning officer may make such inquiries as he or she thinks fit to confirm the authenticity of a nomination paper if he or she considers it appropriate to do so in the circumstances.
- (6) On receipt of a nomination paper, the returning officer must endorse on it the date and time of receipt.
- (7) The election manager is to supply a reasonable number of copies of Forms 2 and 3 free of charge to any person who applies for them.
- (8) A deposit for a nomination proposal is to be paid in the approved manner, by the person proposed for nomination or some person on his or her behalf, by 12 noon on the nomination day.

## 290 Candidate information sheets

- (1) The matters prescribed for the purposes of section 308(2) of the Act that are to be included in a candidate information sheet are—
  - (a) the proposed candidate's full name, and
  - (b) the suburb, town or other locality of the proposed candidate's enrolled address with the meaning of the *Electoral Act 2017*, and
  - (c) whether the proposed candidate is a member of any registered political party and, if so, the name of the party, and
  - (d) whether the proposed candidate is qualified to hold the civic office concerned by virtue of being enrolled on—
    - (i) the residential roll for the ward or area concerned, or
    - (ii) the non-residential roll for the ward or area concerned, or
    - (iii) the roll of occupiers and ratepaying lessees for the ward or area concerned, and
  - (e) whether the proposed candidate is a property developer (within the meaning of Division 7 of Part 3 of the *Electoral Funding Act 2018*).  
**Note.** *Property developer* within the meaning of that Division includes a person who is a close associate of a property developer.
- (2) Nothing in this section prevents the inclusion of other matters (such as the proposed candidate's date of birth, occupation, trade and professional qualifications, membership of organisations, the registered party (if any) that has endorsed the

proposed candidate, statements as to the proposed candidate's policies and beliefs, and other qualifications relevant to the proposed candidature).

- (3) A candidate information sheet must be written or typed on a form supplied by an election official. The form is to consist of one side of an A4 sheet of paper. Explanatory material may be printed on the other side of the A4 sheet of paper.
- (4) As soon as practicable after a candidate is nominated, the election manager must cause the information contained in the candidate's information sheet to be published on the election manager's website until at least election day. The election manager may edit the format in which the information is presented on the website and may delete any material the election manager thinks inappropriate to be included.

## **291 Withdrawal of nomination proposals**

### **(1) Manner of withdrawal**

A nomination proposal may be withdrawn by the delivery or sending (by post or otherwise), or the transmission by facsimile or email, to the returning officer of a notice in writing signed personally by the person proposed for nomination.

### **(2) Timing of withdrawal**

The notice must be delivered, sent or transmitted so as to reach the returning officer by 12 noon on the nomination day.

### **(3) Emailed withdrawal notice**

The notice is not validly transmitted by email unless—

- (a) an image of the completed notice signed by the person proposed for nomination is included in or attached to the email, and
- (b) that image includes an image of the actual signature as appearing on the notice.

### **(4) Inquiries as to authenticity of withdrawal notice**

The returning officer may make such inquiries as he or she thinks fit to confirm the authenticity of a withdrawal notice if he or she considers it appropriate to do so in the circumstances.

## **292 Multiple nomination proposals**

- (1) If a person has been proposed for nomination in respect of more than one ward in an area, and by 12 noon on the nomination day there are still proposals for the nomination of the person in respect of more than one ward in that area, those proposals are all invalid.
- (2) A proposal for nomination for election as councillor is invalid if it is made by a person who has already proposed as many candidates for election as councillor for an area or ward as there are councillors to be elected for that area or ward.
- (3) A proposal for nomination for election as mayor of an area is invalid if it is made by a person who has already proposed a candidate for election as mayor of that area.
- (4) Subsections (2) and (3) do not apply in any case where the proposals referred to are made by the registered officer for a political party registered in the Local Government Register of Political Parties.

## **293 Refund of deposit**

- (1) A deposit in respect of the nomination of a person (the *candidate*) is to be returned if—
  - (a) the candidate withdraws the proposal for nomination or cannot be nominated because the candidate is not qualified to hold civic office, or

- (b) the candidate dies before election day, or
  - (c) the candidate is elected (whether or not a poll is taken), or
  - (d) the candidate receives at least 4 per cent of the total number of formal first preference votes, or
  - (e) the name of the candidate appears in a group on the ballot-papers and any candidate whose name appears in that group is elected or receives at least 4 per cent of the total number of formal first preference votes, or
  - (f) a poll is not taken in the ward or area for which the candidate has been nominated.
- (2) The deposit of a candidate that is required to be returned is to be returned to the person who paid the deposit.
- (3) A deposit that is not required to be returned is to be forfeited to the council.

**294 Inspection of names of persons proposed for nomination**

- (1) The returning officer must prepare a list including—
- (a) the full names of persons proposed for nomination, and
  - (b) the names under which those persons have requested, in the consents to their nomination papers, that those persons be shown on the ballot-papers, and
  - (c) the suburb, town or other locality of the place of living as enrolled of those persons, as stated on the nomination papers.
- (2) A copy of the list in its current form—
- (a) must be displayed on the election manager’s website from the time the first name is placed on the list until the returning officer has nominated candidates under section 295, and
  - (b) may be made available for inspection in accordance with arrangements decided by the election manager.

**295 Returning officer to nominate candidates**

- (1) On the day after the nomination day, or as soon as practicable after that day, and in the presence of scrutineers and any reasonable number of other persons who choose to be present, the returning officer is to do the following—
- (a) attend an approved place, and
  - (b) announce any withdrawals of nominations, and
  - (c) cancel the nomination papers of the persons who have withdrawn, and
  - (d) nominate as candidates for election the persons whose nomination papers the returning officer believes to be valid and that have not been cancelled.
- (2) The name under which the returning officer is to nominate a person as a candidate for election is—
- (a) the name under which the person has requested, in the consent to that person’s nomination paper, that the person be shown on the ballot-papers, or
  - (b) if the returning officer is not satisfied that that name is either one of the given names of the person or a generally recognised abbreviation or derivative of one of the given names together with the full surname of the person—the first given name and the surname of the person.
- (3) On or as soon as practicable after the nomination day, the returning officer is to deliver or send to the election manager a list or lists of—

- (a) the persons proposed for nomination and the names under which the persons have requested, in the consents to their nomination papers, that they be shown on the ballot-papers and of the wards or area for which they are proposed, and
  - (b) the persons nominated as candidates under subsection (1).
- (4) Within 6 days after the nomination day, the returning officer (in relation to an election administered by an electoral services provider) is to deliver or send to the Electoral Commissioner copies of all nomination papers (including the candidate information sheets that accompany the nomination papers).
- (5) The Electoral Commissioner may use the information contained in any copy of a nomination paper sent to the Electoral Commissioner under subsection (4), and any nomination paper in the possession of a returning officer for an election administered by the Electoral Commissioner, for the purpose of ensuring compliance with the Act and this Regulation and exercising functions under the *Electoral Funding Act 2018*.

#### **296 Declaration of uncontested election**

- (1) If, after the returning officer has nominated candidates under section 295, candidates are taken to be elected in accordance with section 311 of the Act, the returning officer must, at the place and time of nomination, declare in writing the names of the candidates so elected.
- (2) The declaration is to be signed by the returning officer and is to state the names of the candidates declared elected (being the names under which those candidates were nominated by the returning officer) and the ward or area for which they have been elected.
- (3) After declaring the election, the returning officer must—
- (a) display the written declaration in a conspicuous position at the office of the relevant council and at the place of nomination (if that place is not the office of the council), and
  - (b) deliver or send a copy of the written declaration to the Electoral Commission, the Secretary, the Chief Executive Officer of Local Government NSW, and the relevant general manager.
- (3A) The election manager must publish the information contained in the written declaration on the election manager's website for at least one month.
- (3B) The election manager may also publish the information contained in the written declaration in any other manner the election manager considers necessary to bring the notice to the attention of members of the public in the area.
- (4) The general manager of a council must, on application to the council by any person, deliver or send to the person a copy of the written declaration.

### **Division 5 Polling places for attendance elections**

#### **296A Application of Division**

This Division applies only to attendance elections.

#### **297 Polling places**

- (1) At least one polling place is to be appointed by the election manager for each ward.
- (1A) A single polling place may be appointed for 2 or more areas or 2 or more wards (or both).
- (2) If an area is divided into wards, at least one polling place is to be appointed by the election manager for all wards, at which a person enrolled in any such ward may vote.



- (3) The election manager may appoint a place as a polling place for an area or ward whether or not the place is within or outside the area or ward concerned.

#### **298 Pre-poll voting offices**

- (1) The election manager must appoint one or more places as pre-poll voting offices for the purpose of enabling electors to vote in person before election day.
- (3) The election manager may appoint a place as a pre-poll voting office whether or not the place is within or outside the area or ward concerned.

**Note.** Subdivision 4 of Division 7 of Part 11 (sections 332 and 332A) provides for mobile booths for the purposes of voting.

### **Division 6 Preparation for poll**

#### **299 Poll**

A contested election is to be determined by ballot.

**Note.** Section 309 of the Act specifies the circumstances in which a contested election is to be held.

#### **300 Notice of contested election**

- (1) If there is to be a contested election in respect of any ward or area, the election manager must publish notice of the contested election on the election manager's website for the period commencing on or as soon as practicable after the nomination day and ending no earlier than election day.
- (2) The notice must include the following information—
  - (a) that a poll will be taken in respect of the ward or area,
  - (b) whether the poll will be conducted by means of attendance and postal voting or conducted exclusively by means of postal voting,
  - (c) in relation to an attendance election—
    - (i) the date of the poll, and
    - (ii) the location of the pre-poll voting office or offices and the hours and days that the pre-poll voting office or offices will be open for pre-poll voting, and
    - (iii) the location of the polling places where the poll will be taken on election day,
  - (d) in relation to a postal election—
    - (i) the week in which postal ballot envelopes are likely to be posted or delivered to voters, and
    - (ii) the date and time by which completed postal votes must reach the returning officer,
  - (e) the full names of the persons who have become candidates and the names under which those persons have been nominated as candidates,
  - (f) the names of the political parties (if any) that must be printed adjacent to the names of the candidates on the ballot-papers,
  - (g) whether the word "Independent" must be printed adjacent to the name of any candidate on the ballot-papers,
  - (h) any other information relating to the election the election manager considers necessary.

- (3) The election manager may also publish notice of the contested election in any other manner the election manager considers necessary to bring the notice to the attention of members of the public in the area.

### **301 Claims for grouping of candidates**

- (1) This section applies to a claim under section 308A (Grouping of candidates) of the Act.
- (2) A claim must be in the form approved by the election manager to be effective.
- (3) A claim is of no effect if—
  - (a) the name of any candidate included in the claim is included in any other claim, or
  - (b) the claim is withdrawn by the candidates who made the claim by a notice—
    - (i) in the form approved by the election manager, and
    - (ii) delivered or sent to the returning officer to be received by the returning officer before midday on the nomination day.
- (4) On receipt of a claim or notice of withdrawal of a claim, the returning officer must endorse on it the date and time of receipt.

### **302 Order of ungrouped candidates and groups on ballot-papers**

If, after the returning officer has nominated candidates under section 295, there are two or more candidates not included in a group or two or more groups of candidates for the election, the returning officer must, as soon as practicable, determine the order of those candidates' names or those groups' names on the ballot-papers by—

- (a) a ballot in accordance with section 303 or 304 (as appropriate), or
- (b) an approved method of random selection (including by electronic means).

### **303 Ballot for determining the order of ungrouped candidates on ballot-papers**

- (1) A ballot to determine the order in which ungrouped candidates' names are to appear on the ballot-papers, as referred to in section 302, is to be conducted in the following manner—
  - (a) the returning officer must, at an approved place and before all persons present, make out in respect of each candidate a slip bearing the name under which the candidate has been nominated,
  - (b) the returning officer must then enclose the slips in separate identical containers, securely seal each container and deposit all the containers in a securely fastened ballot-box,
  - (c) the returning officer must then shake and rotate the ballot-box and, on request, permit any other person present to do the same,
  - (d) the returning officer must then unfasten the ballot-box and take out and open each container one by one,
  - (e) the returning officer must then announce to the persons present and record the name of the candidate whose name appears on the slip enclosed in the container first taken from the ballot-box and, in consecutive order, the name of the candidate whose name appears on the slip enclosed in the container next taken from the ballot-box, and so on until the placing of all the names has been determined,
  - (f) the returning officer must sign the record and allow any of the persons present to do the same,

- (g) the returning officer must promptly deliver or send the original of the record to the election manager.
- (2) Each candidate or an agent of each candidate is entitled to be present at a ballot in accordance with this section.

### **304 Ballot for determining the order of groups of candidates on ballot-papers**

- (1) A ballot to determine the order in which the names of groups of candidates are to appear on the ballot-papers, as referred to in section 302, is to be conducted in the following manner—
  - (a) the returning officer must, at an approved place and before all persons present, make out in respect of each group of candidates a slip bearing the surname of every candidate in the group and, if the returning officer considers it necessary to do so, the given names or the initial letter or letters of the given names of every candidate in the group,
  - (b) the returning officer must then enclose the slips in separate identical containers, securely seal each container and deposit all the containers in a securely fastened ballot-box,
  - (c) the returning officer must then shake and rotate the ballot-box and, on request, permit any other person present to do the same,
  - (d) the returning officer must then unfasten the ballot-box and take out and open each container one by one,
  - (e) the returning officer must then write the word “Group” followed by the letter “A” on the slip enclosed in the container first taken from the ballot-box and write the word “Group” followed by the letter “B” on the slip enclosed in the container next taken from the ballot-box, and so on until the word “Group” and a successive letter of the English alphabet (or, if there are more than 26 groups, a distinctive symbol determined by the returning officer) have been written on each slip,
  - (f) the returning officer must then announce to the persons present, and record, the names of the candidates in each group and include in that record, before the names of the candidates in each group, the word “Group” followed by the identifying letter or symbol determined in respect of that group in accordance with paragraph (e),
  - (g) the record must be signed by the returning officer and may also be signed by any of the persons present,
  - (h) the returning officer must promptly deliver or send the original of the record to the election manager.
- (2) Each candidate or an agent of each candidate is entitled to be present at a ballot in accordance with this section.

### **305 Form of ballot-papers**

- (1) The returning officer is to have ballot-papers printed for the election and is to provide a sufficient number of ballot-papers to be initialled and used for the election.
- (2) Every ballot-paper must contain a mark—
  - (a) in relation to an election administered by an electoral services provider—that bears the name of the council, or
  - (b) in relation to an election administered by the Electoral Commissioner—that has been determined by the Electoral Commissioner.

- (3) In printing the ballot-papers for an election in which there are no groups, the names of the candidates are to be printed in one column (starting at the top) in the order determined as referred to in section 302.
- (4) In printing the ballot-papers for an election—
  - (a) in which there is only one group, the names of candidates included in that group are to be printed in a group before the names of candidates, if any, not included in that group, and
  - (b) in which there are 2 or more groups, the names of candidates included in the groups are to be printed in groups across the ballot-papers (starting from the left side) in the order determined as referred to in section 302, before the names of candidates, if any, not included in any such group, and
  - (c) the order, within a group, in which the names of candidates in that group are to be printed in the ballot-papers is the order specified in the claim made by them under section 308A of the Act, and
  - (d) the names of candidates, if any, not included in any group are to be printed as a group, without any identification referred to in subsection (5), on the ballot-papers in the order determined as referred to in section 302.
- (5) In printing the ballot-papers, each group (and each group voting square relating to the group) is to be identified by the word “Group” followed by a successive letter of the English alphabet, starting with the letter “A”, and if there are more than 26 groups each group (and each group voting square relating to the group) after the twenty-sixth is to be identified by such symbol as may be determined by the election manager.
- (6) If 2 or more persons have been endorsed by a political party as candidates in an election and a claim has been made to include the names of those candidates in a group on the ballot-papers, the following requirements apply to the printing of the ballot-papers—
  - (a) the name of the party by which each candidate was endorsed is to be printed adjacent to the name of that candidate on the ballot-papers,
  - (b) if all the candidates were endorsed by the same party and a group voting square is printed on the ballot-papers in relation to the candidates—the name of the party is to be printed on the ballot-papers adjacent to that square,
  - (c) if an application under section 321 of the Act included a request that a composite name be printed on the ballot-papers adjacent to the candidates’ group voting square—the composite name is to be printed on the ballot-papers adjacent to that square.
- (7) The ballot-papers must show as the names of the candidates the names under which they were nominated. The names may be accompanied by descriptions or additions to distinguish them from each other in any case where a similarity in the names of 2 or more candidates is, in the opinion of the returning officer, likely to cause confusion.
- (8) For an election in which there are no groups, the ballot-papers are to be in Form 4. For an election in which there are one or more groups but no group has a group voting square, the ballot-papers are to be in Form 5. For an election in which there are one or more groups and one or more groups has a group voting square, the ballot-papers are to be in Form 6.

**Note.** Section 323 of the Act requires the name of a party or the word “Independent” to be printed as well in certain circumstances.

## **Division 6A Further preparation for attendance elections**

### **308 Application of Division**

This Division applies only to attendance elections.

### **309 Supply of rolls and ballot-papers**

- (1) On or before the day of polling the returning officer is to—
  - (a) provide for use at each polling place sufficient authorised copies (whether in printed or electronic form) of the roll of electors for the ward or area in which the poll is to be taken, and
  - (b) deliver to each polling place manager, and retain, such numbers of the ballot-papers as are sufficient for the use of the electors entitled to vote at each polling place.
- (2) The returning officer is to keep an exact count of all those ballot-papers.
- (3) The returning officer is to retain for use at his or her office—
  - (a) at least one authorised copy of the roll of electors for the ward or area in which the poll is to be taken, and
  - (b) such number of ballot-papers as the returning officer considers will be required for the use of electors who are permitted to vote at his or her office before election day.
- (4) The returning officer is to keep an exact count of those ballot-papers.

### **310 Return of numbers of ballot-papers before poll**

Not later than the day before election day, the returning officer is to deliver or send to the election manager a return of the following numbers of ballot-papers—

- (a) the numbers ordered and received from the printer,
- (b) the numbers issued as postal ballot-papers,
- (c) the numbers issued for use at pre-poll voting offices, declared institutions and polling places,
- (d) the numbers not issued at all.

### **311 Ballot-paper to be initialled**

A ballot-paper, before being delivered or sent to an elector, is to be initialled on the front by an election official.

### **312 Ballot-paper may be photocopied, written or otherwise reproduced**

- (1) If a polling place, pre-poll voting office or declared institution does not have or runs out of ballot-papers printed in accordance with section 305, the returning officer, polling place manager or other election official in charge at the time may have the ballot-paper reproduced by photocopying or writing or may use copies obtained by facsimile or email.
- (2) A ballot-paper so reproduced or obtained is still required to be in Form 4, 5 or 6 and is to be in the same general format as the ballot-paper printed in accordance with section 305.
- (3) A ballot-paper so reproduced or obtained and complying with subsection (2) is as valid as a form printed in accordance with section 305.

## **Division 7      Special voting at attendance elections**

### **Subdivision 1AA Application of Division**

#### **312A    Application of Division**

This Division applies only to attendance elections.

### **Subdivision 1    Postal voting**

#### **313    Postal voting: qualifications**

A person is qualified for a postal vote under this Subdivision if the person—

- (a) will not throughout the hours of polling on election day be within the ward or area for which the election is being held, or
- (b) will not throughout the hours of polling on election day be within 8 kilometres by the nearest practicable route of any polling place at which he or she is entitled to vote, or
- (c) will throughout the hours of polling on election day be travelling under conditions that prevent him or her from attending at any such polling place to vote, or
- (d) is seriously ill or disabled and so will be prevented from attending at any such polling place to vote, or
- (e) is prevented by approaching maternity from attending at any such polling place to vote, or
- (f) is, by reason of that person's membership of a religious order or religious beliefs, prevented from attending at any such polling place or prevented from voting throughout the hours of polling on election day or throughout the greater part of those hours, or
- (g) is, by reason of that person being kept in a correctional centre (within the meaning of the *Crimes (Administration of Sentences) Act 1999*), prevented from attending at any such polling place to vote, or
- (h) will be, at a place other than a hospital, caring for another person who requires his or her care for medical reasons and so will be prevented from attending at any such polling place to vote, or
- (i) will, by reason of being engaged for fee, gain or reward in any work throughout the hours of polling on election day, be prevented from attending at any such polling place to vote, or
- (j) is a silent elector, or
- (k) is a person with a disability (within the meaning of the *Anti-Discrimination Act 1977*), or
- (k1) is a permanent or temporary resident in a hospital, nursing home, retirement village or similar facility, or
- (k2) is self-isolating because of COVID-19 related reasons, or
- (k3) reasonably believes that attending a polling place on election day will pose a risk to the health or safety of the person, or of another person, because of the COVID-19 pandemic, or
- (l) believes that attending a polling place on election day will place the personal safety of the person or of members of the person's family at risk, or
- (m) is an elector enrolled on the roll of electors for an election for the City of Sydney (but only in relation to any such election).

### **314 Applications for postal voting**

- (1) A person qualified under this Subdivision may apply, in the approved form and manner, to the election manager for a postal ballot-paper and postal vote certificate envelope.
- (2) An application under this section must be received by the election manager before 5 pm on the fifth day before election day.

**Note.** Section 388A provides that an application for postal voting is taken to be duly made if an elector intending to vote by a postal vote applies under that section for a ballot-paper in braille format.

### **315 Registration of registered early voters (postal)**

- (1) An elector who is registered as a registered early voter (postal) within the meaning of the *Electoral Act 2017* is taken to be registered as registered early voter (postal) for the purposes of the *Local Government Act 1993* without further application under the latter Act.
- (2) The elector is taken to be so registered for the ward or area corresponding to the address in respect of which the elector is registered as a registered early voter (postal) under the *Electoral Act 2017*.
- (3) The elector must be so registered not later than 6 pm on the closing date for an election if the applicant is to be treated as a registered early voter (postal) for the election.

### **316 Electors entitled to postal vote**

- (1) An elector who duly applies for a postal vote or is registered as a registered early voter (postal) is entitled to make a postal vote in the ward or area to which the elector's application or registration relates.
- (2) In the case of an election administered by an electoral services provider, the Electoral Commissioner must forward to the election manager as soon as possible after the nomination day for an election a list of those registered early voters (postal) registered under the *Electoral Act 2017* who are entitled to vote at an election in respect of a ward or area.

### **317 Issue of postal ballot-paper**

- (1) On receiving the elector's duly made application for a postal vote or the list on which the elector's name appears, the election manager is to make a record that a ballot-paper is being issued to the elector and deliver or send the following to the elector—
  - (a) a ballot-paper that is initialled on the front by an election official (by hand or by electronic or mechanical means),
  - (b) an envelope on which a postal vote certificate is printed,
  - (c) if the envelope on which the postal vote certificate is printed is not addressed to the returning officer—another envelope addressed to the returning officer,
  - (d) information as to how to access the candidate information sheets of the candidates in the election that have been published on the election manager's website under section 290(4).
- (2) Ballot-papers and envelopes delivered or sent under this section to a non-resident postal voter are to be delivered or sent to—
  - (a) the residential address of that elector, or

- (b) if the elector specified another preferred postal address in the application for a postal ballot-paper and postal vote certificate envelope under section 314—the address specified in the application.

### **318 Postal voting procedure**

- (1) To make a postal vote, an elector is to—
  - (a) show to a witness the ballot-paper and postal vote certificate delivered or sent to the elector under section 317, and
  - (b) in the presence of the witness, and if the facts on the certificate are correct, sign the certificate in the space provided.
- (2) The witness is to sign and date the certificate in the place provided.
- (3) The elector is then to do the following in the presence of the witness, but without showing the witness how the elector has voted—
  - (a) vote as directed on the ballot-paper,
  - (b) fold the ballot-paper so that the vote cannot be seen,
  - (c) place the ballot-paper in the envelope on which the postal vote certificate is printed and close and seal the envelope,
  - (d) if the envelope on which the postal vote certificate is printed is not addressed to the returning officer—place that envelope in the envelope addressed to the returning officer and close and seal the envelope.
- (4) The elector is then to deliver or send the envelope, or have it delivered or sent, to be received by the returning officer before 6pm on the 13th day following election day.
- (5) An envelope containing or purporting to contain a postal ballot-paper is taken to have been received by the returning officer if it is delivered to the polling place manager at any polling place between 8 am and 6 pm on election day. The envelope is to be placed in the ballot-box at the polling place.
- (6) An elector to whom a ballot-paper has been delivered or sent under this Subdivision is not entitled to vote at a polling place or pre-poll voting office without first surrendering the ballot-paper and the postal vote certificate envelope to the polling place manager at the polling place or the pre-poll voting officer at the pre-poll voting office, as the case requires.
- (7) However, if the elector makes a declaration in an approved form that the elector has not received, or has lost, the ballot-paper or the postal vote certificate envelope or both and that the elector will not use them if he or she later receives or finds them, the elector may be permitted to vote.

**Note.** See section 387 as to spoilt ballot-papers and section 388 as to the assistance of electors.

### **319 Closing time for postal vote**

A postal vote that is not received by the returning officer before 6pm on the 13th day following election day is not valid and must not be counted.

### **320 Receipt of postal ballot-papers**

- (1) If the returning officer receives an envelope containing or purporting to contain a postal ballot-paper before 6pm on the 13th day following election day, the officer is to make an appropriate record of the receipt of the envelope.
- (2) The returning officer is to place the envelope unopened in the postal ballot-box.

**Note.** Section 347 provides for the preliminary scrutiny of postal voting envelopes.



## Subdivision 1A Provisional voting

### 320A Person already marked off roll

- (1) An elector, at a polling place in an area at any election, who is recorded (on the authorised copy of the roll used at the polling place) as having received a ballot-paper, but who claims not to have received a ballot-paper, is to be permitted to vote at the election.
- (2) The elector is to be permitted to vote if the elector—
  - (a) answers the questions set out in section 339(4), and
  - (b) makes a declaration in the form approved by the Electoral Commissioner before an election official at the polling place.

### 320B Person omitted from roll

A person, at a polling place in an area at any election—

- (a) who was enrolled for the area, and
- (b) whose name was omitted from the roll of electors for the area (for any reason), and
- (c) who claims to be entitled to vote at the election,

is to be permitted to vote if the person makes a declaration in the form approved by the Electoral Commissioner before an election official at the polling place.

### 320C Person enrolling for first time, re-enrolling or transferring enrolment

- (1) A person, at a polling place in an area at any election, who is not enrolled for the area (whether the person is enrolled for another area or is not enrolled for any area), but who claims to be entitled to enrol on the residential roll for the area, is to be permitted to vote at the election.
- (2) The person must—
  - (a) complete a claim for enrolment in the form approved by the Electoral Commissioner and submit it to an election official at the polling place, and
  - (b) provide to that election official as proof of identity a driver licence or a Photo Card, and
  - (c) make a declaration in the form approved by the Electoral Commissioner before that election official.
- (3) The person is to be permitted to vote at the election if the election official is satisfied that—
  - (a) the claim for enrolment has been properly completed, and
  - (b) the person is who the person claims to be, and
  - (c) the proof of identity provided shows that the person's residence is the same as the place specified in the claim for enrolment as the person's residence.

**Note.** If a person cannot produce a driver licence or a Photo Card, the person will not be permitted to vote under this section.

### 320D Person enrolled after closing date

A person, at a polling place in an area at any election, who is enrolled for the area, but whose name does not appear on the authorised copy of the roll at the polling place, is to be permitted to vote if the person makes a declaration in the form approved by the Electoral Commissioner before an election official.

**Note.** The Electoral Commissioner may enrol a person at any time, including after the authorised copy of the roll for an election has been printed.

**320E Procedure for provisional voting**

- (1) A declaration required to be made under this Subdivision—
  - (a) is to be written or printed on an envelope, and
  - (b) may include a claim for enrolment or transfer of enrolment.
- (2) A person voting under this Subdivision, after making the required declaration and receiving a ballot-paper, is to mark the ballot-paper and fold it to conceal the vote marked on it and return it folded to the polling place manager.
- (3) The polling place manager on receiving the ballot-paper must, in the presence of the person and of any scrutineers present, and without unfolding the ballot-paper, enclose it in the envelope, seal the envelope and put it in the ballot-box.
- (4) The polling place managers are each to make a list of provisional votes. Each polling place manager is to note on the list—
  - (a) the giving of a ballot-paper at the polling place where the polling place manager is in charge to an elector who has made a declaration under this Subdivision, and
  - (b) the number of such votes delivered or sent to the returning officer from that polling place (or, if the polling place manager is the returning officer, retained by him or her).

**320F Provisional voting at pre-poll voting offices and declared institutions**

- (1) This Subdivision extends to voting at a pre-poll voting office, subject to the following—
  - (a) a reference to a polling place is taken to include a reference to a pre-poll voting office,
  - (b) a reference to a polling place manager is taken to include a reference to a pre-poll voting officer.
- (2) This Subdivision (other than section 320C) extends to voting at a declared institution, subject to the following—
  - (a) a reference to a polling place is taken to include a reference to a declared institution, and
  - (b) a reference to a polling place manager is taken to include a reference to a pre-poll voting officer at the declared institution.

**Subdivision 2 Pre-poll voting at pre-poll voting offices**

**321 Pre-poll voting: qualifications**

- (1) A person is qualified to vote before election day under this Subdivision if the person—
  - (a) will not throughout the hours of polling on election day be within the ward or area for which the election is being held, or
  - (b) will not throughout the hours of polling on election day be within 8 kilometres by the nearest practicable route of any polling place at which he or she is entitled to vote, or
  - (c) will throughout the hours of polling on election day be travelling under conditions that prevent him or her from attending at any such polling place to vote, or
- (c1) is disabled and so will be prevented from attending at any such polling place to vote, or

- (c2) is prevented by approaching maternity from attending at any such polling place to vote, or
  - (c3) is seriously ill or infirm, and by reason of such illness or infirmity will be precluded from attending at any polling place to vote, or
  - (c4) is, by reason of his or her being kept in a correctional centre (within the meaning of the *Crimes (Administration of Sentences) Act 1999*), precluded from attending at any polling place to vote, or
  - (d) is, by reason of that person's membership of a religious order or religious beliefs, prevented from attending at any such polling place or prevented from voting throughout the hours of polling on election day or throughout the greater part of those hours, or
  - (e) will be, at a place other than a hospital, caring for another person who requires his or her care for medical reasons and so will be prevented from attending at any such polling place to vote, or
  - (f) will, by reason of being engaged for fee, gain or reward in any work throughout the hours of polling on election day, be prevented from attending at any such polling place to vote, or
  - (g) is a silent elector, or
  - (h) is a person with a disability (within the meaning of the *Anti-Discrimination Act 1977*), or
  - (i) believes that attending a polling place on election day will place the personal safety of the person or of members of the person's family at risk, or
  - (j) is an elector enrolled on the roll of electors for an election for the City of Sydney (but only in relation to any such election).
- (2) In relation to an ordinary election of councillors to be held in December 2021, all persons who are qualified to vote in the election are qualified to vote before election day under this Subdivision.
- (3) Subsection (2) and this subsection are repealed on 31 December 2021 at the end of the day.

### **323 Pre-poll voting procedure**

(1) **Application may be made**

A person qualified under this Subdivision may apply for a pre-poll ballot paper. The application is to be made orally—

- (a) by the elector in person, and
- (b) to a pre-poll voting officer at a place, on a day and during hours, respectively appointed by or under sections 298 and 326.

(2) **Oral declaration by elector**

The elector is to make an oral declaration to a pre-poll voting officer stating—

- (a) the name under which the elector claims to vote and such other particulars as the officer requires for the purpose of checking the name on the officer's authorised copy of the roll, and
- (b) that the elector is entitled to vote at the election, and
- (c) that the elector has not already voted in connection with the election and will not vote anywhere else in connection with the election, and
- (d) the ground on which the elector is making the application.

**(4) Questions**

A pre-poll voting officer may, and must if requested to do so by any scrutineer, put to the elector who made the application under this section any of the questions set out in section 339 that are applicable to the case.

**(5) Ballot-paper to be handed to elector**

If the elector answers the questions satisfactorily or no questions are to be put to the elector, the pre-poll voting officer must hand to the elector a ballot-paper in Form 4, 5 or 6 that is initialled on the front by the officer.

**(6) Record of voting**

The pre-poll voting officer is to make an appropriate notation on the officer's authorised copy of the roll of electors to show that the elector has received a ballot-paper.

**(7) Delivery of ballot-paper to elector**

On receiving a pre-poll ballot-paper, the elector is to—

- (a) go alone to an unoccupied space set aside for voting at the pre-poll voting office, and privately record his or her vote there on the ballot-paper, and
- (b) fold the ballot-paper so as to conceal the vote marked on it, and then put it in the pre-poll ballot-box without unfolding it, and
- (c) leave the pre-poll voting office.

**324 Pre-poll ballot-box to be delivered or sent to returning officer**

A pre-poll ballot-box is to be delivered or sent unopened to the returning officer as soon as the ballot-box is no longer required for further voting.

**325 Surrender of postal ballot-papers**

An elector to whom a postal ballot-paper and postal vote certificate have been issued is not entitled to vote in accordance with this Subdivision unless the elector first delivers to a pre-poll voting officer the elector's postal ballot-paper and postal vote certificate for cancellation.

**326 Pre-poll voting offices and times**

- (1) The election manager is to determine the days and hours of operation of the pre-poll voting offices to be used to enable electors to vote in person before election day in accordance with this Subdivision, being days and hours between the twelfth and first days before election day.
- (3) The election manager may require the pre-poll voting officer to display at the pre-poll voting office—
  - (a) a notice informing electors that—
    - (i) candidate information sheets are available on the election manager's website, and
    - (ii) electors may request access to candidate information sheets, or
  - (b) a copy of each candidate information sheet.
- (3A) An elector who requests access to a candidate information sheet must be given access to the candidate information sheet by the pre-poll voting officer.
- (3B) For the purposes of subsection (3A), access may include electronic access to a website on which the candidate information sheet is published.

- (4) Nothing in this section prevents the offices referred to in this section from being used for other purposes in connection with the election.

**Notes.**

- 2 See section 387 as to spoilt ballot-papers and section 388 as to the assistance of electors.

### **Subdivision 3 Declared institution voting**

#### **327 Declared institutions**

- (1) The election manager may, not later than on the nomination day, declare a hospital, nursing home, retirement village or similar facility in an area to be a declared institution for the purpose of enabling permanent or temporary residents of the facility who are electors of the area to vote in person before election day.
- (2) A declared institution is, for the purposes of this Part, taken to be a pre-poll voting office while voting is occurring at the facility.

#### **328 Taking of poll at declared institutions**

- (1) The returning officer for an area in which a declared institution is situated must assign one or more pre-poll voting officers to take the poll at the institution.
- (2) The pre-poll voting officers may, on any day during the 7 days before election day appointed by the election manager, enter into and remain in the institution for the purpose of taking the poll at the institution.

#### **329 Entitlement to vote at declared institutions**

- (1) An elector who—
- (a) is, for the time being, a permanent or temporary resident of a declared institution, and
- (b) has, by message to the returning officer for the area in which the institution is situated or a pre-poll voting officer assigned to take the poll at the institution, requested an opportunity to record his or her vote at the institution,
- is entitled to vote under this Subdivision while the pre-poll voting officers are at the institution for the purpose of taking the poll.
- (2) An elector to whom a postal vote certificate and postal ballot paper have been issued is not entitled to vote under this Subdivision unless he or she first delivers for cancellation to a pre-poll voting officer who takes the poll at the institution of which the elector is a permanent or temporary resident, his or her postal vote certificate and postal ballot paper.
- (3) A person to whom any message referred to in subsection (1)(b) is given for delivery to a pre-poll voting officer must, unless otherwise ordered on medical grounds by a legally qualified medical practitioner, deliver the message to a pre-poll voting officer before, or forthwith after, a pre-poll voting officer enters, for the purpose of taking the poll, the declared institution of which the person making the request is a permanent or temporary resident.
- Maximum penalty—0.5 penalty unit.

#### **330 Procedure for voting at declared institutions**

(1) **Opportunity to vote to be given**

The pre-poll voting officers must afford an elector entitled to vote under this Subdivision the opportunity to record his or her vote by visiting the elector at the declared institution of which the elector is, for the time being, a permanent or temporary resident.

(2) **Visit may be forbidden on medical grounds**

A visit to an elector must not be made under this section if the pre-poll voting officer is informed, by a legally qualified medical practitioner or member of the staff of the declared institution of which the elector is, for the time being, a permanent or temporary resident, that the visit is forbidden, on medical grounds, by a legally qualified medical practitioner.

(3) **Oral declaration by elector**

The elector is to make an oral declaration to a pre-poll voting officer stating—

- (a) the name under which the elector claims to vote and such other particulars as the officer requires for the purpose of checking the name on the officer's authorised copy of the roll, and
- (b) that the elector is entitled to vote at the election, and
- (c) that the elector has not already voted in connection with the election and will not vote anywhere else in connection with the election.

(5) **Questions**

A pre-poll voting officer may, and must if requested to do so by any scrutineer, put to an elector visited by him or her under this Subdivision any of the questions set out in section 339 that are applicable to the case.

(6) **Ballot-paper to be handed to elector**

If the elector answers the questions satisfactorily or no questions are to be put to the elector, the pre-poll voting officer must hand to the elector a ballot-paper in Form 4, 5 or 6 that is initialled on the front by the officer.

(7) **Record of voting**

The pre-poll voting officer is to make an appropriate notation on the officer's authorised copy of the roll of electors to show that the elector has received a ballot-paper.

(8) **Delivery of ballot-paper to elector**

On receiving the ballot-paper, the elector is to—

- (a) privately record his or her vote on the ballot-paper, and
- (b) fold the ballot-paper so as to conceal the vote marked on it, and then put it in the declared institutions ballot-box without unfolding it.

**331 Declared institutions ballot-box to be delivered or sent to returning officer**

A declared institutions ballot-box is to be delivered or sent unopened to the returning officer as soon as the ballot-box is no longer required for further voting.

## **Subdivision 4 Mobile booths**

**332 Mobile polling places in hospital, nursing home, retirement village or similar facilities**

- (1) Mobile polling may take place for the purposes of the Act in any hospital, nursing home, retirement village or similar facility in accordance with Subdivision 3 of Division 6 of Part 7 of the *Electoral Act 2017*.
- (2) Subdivision 3 of Division 6 of Part 7 of the *Electoral Act 2017* applies to voting at a mobile polling booth under the Act in any hospital, nursing home, retirement village or similar facility in the same way as it applies to voting at a mobile voting centre under the *Electoral Act 2017*.

- (3) No offence under the *Electoral Act 2017* (as applied by this section) applies under this Regulation.

**332A Mobile booths for pre-poll voting in remote local government areas**

(1) **Election manager's functions**

The election manager—

- (a) may declare an area to be a remote area for the purposes of this section, and
- (b) may determine the places in that area that a team will visit for the purposes of this section, and
- (c) may determine the days and times when a team will visit those places (such a day must be after nomination day and before election day or a day to which the polling is adjourned), and
- (d) must take such steps as it thinks fit to give public notice of—
  - (i) the places determined under paragraph (b), and
  - (ii) the days and times determined under paragraph (c) when a team will visit such a place for the purposes of this section.

(2) **Teams**

A team consists of two or more election officials, one of whom must be a pre-poll voting officer who is designated by the election manager as team leader. The team leader is to exercise the functions of the pre-poll voting officer under the following provisions of this section.

(3) **Visits and variation of places, days or times**

A team must make a visit or visits as notified under subsection (1)(d), but, if the team is unable for reasonable cause, or the pre-poll voting officer considers it inappropriate, to make such a visit, the officer may substitute another place, day or time for the visit and, in that event, must—

- (a) take such steps as he or she thinks fit to give public notice of the substituted place, day or time, and
- (b) inform the election manager.

(4) **Failure to visit does not invalidate election result**

Any failure by a team to make a visit in accordance with this section does not invalidate the result of the election.

(5) **Voting**

At any time when a team is at a place for the purposes of taking votes under this section in an election—

- (a) the pre-poll voting officer must have a pre-poll ballot-box, ballot-papers and such other things as are necessary for the votes of electors to be taken at the place, and
- (b) every person at the place who is entitled to vote in the election for the area is entitled to have his or her vote taken under this section, and
- (c) for purposes of, and in connection with, the taking of votes under this section—
  - (i) the place is taken to be a pre-poll voting office, and
  - (ii) the pre-poll voting officer is taken to be the pre-poll voting officer at that office, and

- (d) an elector's vote is so far as is reasonably practicable to be taken and dealt with in all respects as if the vote were recorded at a pre-poll voting office under usual conditions, but the following provisions are to be disregarded for this purpose—
- (i) section 321 regarding the qualifications to vote before election day,
  - (ii) section 326 regarding pre-poll voting times and candidate information sheets.
- (6) **Ballot-box to be secured and forwarded to returning officer**
- At the end of the last visit made by a team for the purposes of this section, the pre-poll voting officer must, in the presence of any other election official assisting the officer and any scrutineers who are present—
- (a) publicly close, fasten, seal and take charge of the ballot-box used by the officer for the purposes of this section, and
  - (b) with the least possible delay, forward it for the purposes of scrutiny to the returning officer for the area concerned.
- (7) **Relationship of this section to other provisions**
- In relation to an area declared by the election manager to be a remote area, and without affecting subsection (5)(d), the provisions of this section apply in addition to, and without derogation from, the application of any other provision of this Regulation. However, any such other provision applies with any necessary modifications.

## Subdivision 5 Miscellaneous

### 333 Assistance of officers

In this Part, a reference to a returning officer, a polling place manager or a pre-poll voting officer includes a reference to an election official appointed to assist the officer in the performance of his or her duties.

## Division 7A Technology assisted voting

### 333A Application of Division

- (1) This Division applies to an election administered by the Electoral Commissioner.
- (2) To avoid doubt, this Division adopts the *Electoral Act 2017*, Part 7, Division 11.

### 333B Definitions

In this Division—

***approved procedures*** means the procedures approved under section 333F.

***eligible elector***—see section 333C.

***technology assisted voting*** means a method of voting where an eligible elector votes by means of an electronic device, whether networked or not.

### 333C Meaning of “eligible elector”

- (1) For the purposes of this Division, an ***eligible elector*** means an elector who meets any of the following eligibility requirements for technology assisted voting and any additional requirements imposed on those eligibility requirements under subsection (2)—
  - (a) the elector is qualified for a postal vote under Part 11, Division 7, Subdivision 1 and has duly applied for a postal ballot-paper and postal vote certificate



envelope under that Subdivision, but has not received a postal ballot-paper and postal vote certificate envelope before 5pm on the day that is 8 days before election day,

- (b) the elector has a disability, within the meaning of the *Anti-Discrimination Act 1977*, and because of the disability the elector has difficulty voting at a polling place or is unable to vote without assistance,
  - (c) the elector is illiterate and because of that the elector is unable to vote without assistance,
  - (d) the elector's residence is not within 20 kilometres, by the nearest practicable route, of a polling place,
  - (e) the elector is a silent elector,
  - (f) the elector will not, during the hours of voting on election day, be within the area for which the election is being held,
  - (g) the elector is a registered early voter (technology assisted voting).
- (2) The Electoral Commissioner may, by order published on the NSW legislation website, impose additional requirements on any of the eligibility requirements for technology assisted voting.

**333D Application to vote by means of technology assisted voting**

- (1) An elector may apply to vote at an election by means of technology assisted voting.
- (2) An application under this section must be made in the way specified in the approved procedures and must specify the ground on which the elector is making the application.

**333E Electoral Commissioner to determine applications**

If the Electoral Commissioner is satisfied that an applicant is an eligible elector, the applicant must be permitted to vote at the election by means of technology assisted voting in accordance with this Division.

**333F Electoral Commissioner to approve procedures for technology assisted voting**

- (1) The Electoral Commissioner may approve procedures to facilitate voting by eligible electors at an election by means of technology assisted voting.
- (2) The approved procedures must provide—
  - (a) for an eligible elector to register before voting by means of technology assisted voting, and
  - (b) for the automatic registration of electors who are registered early voters (technology assisted voting) and the notification of those electors of that registration, and
  - (c) for the making of a record of each eligible elector who has voted by means of technology assisted voting, and
  - (d) for the authentication of the eligible elector's vote, and
  - (e) for the secrecy of the eligible elector's vote, and
  - (f) that a vote cast in accordance with the approved procedures be securely transmitted to the Electoral Commissioner and securely stored by the Electoral Commissioner until printed, and
  - (g) that the method of technology assisted voting creates an image file in the form of a ballot-paper, for example a PDF, for each vote cast that is capable of being viewed or printed if required for the purposes of the scrutiny, and

- (h) the way the information about the votes is to be communicated to the returning officer for the area.
- (3) An image file of a ballot-paper created in accordance with the approved procedures does not need to be in or to the effect of Form 4, 5 or 6, as the case requires, or, when printed, create a ballot-paper of the same size or format as the ballot-papers printed in accordance with Division 6, so long as the vote cast by the eligible elector can be accurately determined.
- (4) The Electoral Commissioner may approve procedures under this section only if the Electoral Commissioner is satisfied that—
  - (a) a class of electors, who in other circumstances would be unable to vote or would have difficulty voting, would benefit from the approval of the procedures, or
  - (b) in relation to a trial of voting machines at one or more polling places—the trial would assist in determining whether the use of voting machines would improve the conduct of elections and benefit the electors using them.
- (5) The only limit on the power of the Electoral Commissioner to approve procedures under this section is that the pre-condition for approval set out in subsection (4) is met.
- (6) The approval of procedures under this section cannot be challenged, reviewed or called into question in proceedings before a court or tribunal except on the grounds that the approval exceeds the jurisdictional limit specified by subsection (5) for the approval of such procedures.
- (7) To avoid doubt, subsection (6) adopts the *Electoral Act 2017*, section 155(6).

### **333G Independent auditing of technology assisted voting**

- (1) The Electoral Commissioner must engage an independent person (the *independent auditor*) to conduct audits of the information technology used under the approved procedures.
- (2) Audits under this section are to be conducted and the results of those audits must be provided to the Electoral Commissioner—
  - (a) at least 7 days before voting commences in each ordinary election for councillors at which technology assisted voting is to be available, and
  - (b) within 60 days after the last declaration of the result of an election to which this Division applies.
- (3) Without limiting the content of the audit, the independent auditor must determine whether test votes cast in accordance with the approved procedures were accurately reflected in the corresponding test ballot-papers produced under those procedures.
- (4) The independent auditor may make recommendations to the Electoral Commissioner to reduce or eliminate a risk that could affect the security, accuracy or secrecy of voting in accordance with the approved procedures.

### **333H Independent monitoring of technology assisted voting**

- (1) The Electoral Commissioner may appoint one or more independent persons (an *independent monitor*) to monitor and observe the technology assisted voting process at an election, including the counting of votes cast by means of technology assisted voting and the general operation of the technology assisted voting process.
- (2) An independent monitor must report and may make recommendations to the Electoral Commissioner regarding the technology assisted voting process.

### **333I Scrutineers**

A candidate or registered political party may appoint a scrutineer to observe—

- (a) the production of printed ballot-papers and bundling and sealing of those ballot-papers in accordance with the approved procedures, and
- (b) any other element of the technology assisted voting process that is approved for the purposes of this section.

### **333J Secrecy relating to technology assisted voting**

- (1) This section adopts the *Electoral Act 2017*, section 159.

**Note—** The Act, section 748(3) and (4) provides for the creation of offences in connection with elections and polls by adopting, with modifications as necessary, a provision of the *Electoral Act 2017*, and for the penalty for an offence not to exceed the penalty for the corresponding offence in that Act.

- (2) A person who becomes aware of how an eligible elector, voting in accordance with the approved procedures, voted is not to disclose that information to another person except in accordance with the approved procedures.

Maximum penalty—20 penalty units or imprisonment for 6 months, or both.

- (3) A person must not disclose to another person a source code or other computer software that relates to technology assisted voting under the approved procedures, except in accordance with the approved procedures or in accordance with an arrangement entered into by the person with the Electoral Commissioner.

Maximum penalty—200 penalty units or imprisonment for 2 years, or both.

### **333K Protection of computer hardware and software**

- (1) This section adopts the *Electoral Act 2017*, section 160.

**Note—** The Act, section 748(3) and (4) provides for the creation of offences in connection with elections and polls by adopting, with modifications as necessary, a provision of the *Electoral Act 2017*, and for the penalty for an offence not to exceed the penalty for the corresponding offence in that Act.

- (2) A person must not, without reasonable excuse, destroy or interfere with a computer program, data file or electronic device used, or intended to be used, by the Electoral Commissioner for or in connection with technology assisted voting.

Maximum penalty—200 penalty units or imprisonment for 3 years, or both.

- (3) An offence under this section is an indictable offence.

### **333L Electoral Commissioner may determine that technology assisted voting is not to be used**

- (1) The Electoral Commissioner may determine that technology assisted voting is not to be used at a specified election.

- (2) A determination under this section must be in writing and published on the Electoral Commission's website.

## **Division 8 Ordinary voting at attendance elections**

### **334 Application of Division**

This Division applies only to attendance elections.

### **335 Polling place—arrangements**

(1) **Assignment of polling place manager**

The returning officer must assign an election official to preside at each polling place as polling place manager.

(2) **Assignment of other election officials to assist**

The returning officer must assign at least one other election official to assist in taking the poll at a polling place.

(3) **Returning officer polling place manager**

If the returning officer's instrument of appointment or another instrument issued by the election manager authorises him or her to do so, the returning officer may act as the polling place manager at a polling place, in which case the returning officer is taken to be a polling place manager duly assigned to preside at the polling place.

(4) **Assignments to be in writing**

Assignments under this section must be made in writing.

(5) **Functions of polling place managers and other election officials**

The functions of polling place managers and other election officials are, subject to the Act and this Regulation, to be as determined by—

- (a) in relation to an election administered by an electoral services provider—the returning officer, or
- (b) in relation to an election administered by the Electoral Commissioner—the Electoral Commissioner.

### **335A Polling place—arrangements for COVID-19 pandemic**

(1) The election manager may require an election official to display a notice near the candidate information sheets displayed at a polling place in accordance with the Act, section 308(4).

(2) The notice must include information that—

- (a) reminds electors to socially distance, and
- (b) informs electors that candidate information sheets are available—
  - (i) on the election manager's website, and
  - (ii) if the elector makes a request to an election official for a candidate information sheet.

(3) An election official must provide access to a candidate information sheet on the request of an elector.

### **336 Hours of voting**

(1) The voting at a poll is to commence at 8 am and close at 6 pm on the same day. A person entitled to vote who at the time of closing the poll is within the polling place is to be permitted to vote.

(2) This section does not apply to any form of voting under Division 7 (Postal and other special types of voting) of this Part.

### **337 Scrutineers**

(1) Each candidate may appoint scrutineers to be present at each place at which polling is carried out, ballot-papers are scrutinised or votes are counted.

- (2) In the case of candidates belonging to a group, such an appointment may be made by any or all of them.
- (3) The election manager may approve a form that provides for both—
  - (a) the appointment of a scrutineer by a candidate, and
  - (b) a declaration to be made and signed by the scrutineer.
- (4) The appointment by a candidate of a scrutineer is to be made in a form approved under subsection (3).
- (4A) A person appointed as a scrutineer is to make and sign a declaration in a form approved under subsection (3).
- (4B) A person appointed as a scrutineer cannot act as scrutineer on any day unless the person presents the completed form (comprising a single document) on that day to an election official.
- (4C) The declaration is to be made and signed on each day on which the person intends to act as scrutineer before an election official at the place at which the scrutineer intends to act as scrutineer.
- (4D) A reference in this section to a completed form includes a reference to a copy of a completed form, but the copy is to be duly signed on each day as required by subsection (4C).
- (4E) Part 4 of the *Oaths Act 1900* applies to a declaration made under this section as if it were made under that Act.
- (5) A candidate in an election cannot be a scrutineer in relation to the same election or in relation to simultaneous elections in the same area.
- (6) Nothing in this section entitles a candidate or group to be represented by more than one scrutineer at any one place at which polling is carried out, ballot-papers are scrutinised or votes are counted.
- (7) The separate tables or stations within any building, room or other location at which polling is carried out, ballot-papers are scrutinised or votes are counted are taken to be separate places for the purposes of subsection (6).

**337A Special provisions about scrutineers for COVID-19 pandemic**

- (1) Despite section 337, the election manager may direct that—
  - (a) scrutineers are prohibited from being physically present at a relevant place, or
  - (b) there is a maximum number of scrutineers that may be present at a relevant place.
- (2) The direction must be published on the election manager's website.
- (3) A direction under subsection (1) may be made only if the election manager is satisfied—
  - (a) there are alternative scrutiny arrangements for each relevant place, and
  - (b) the direction is necessary—
    - (i) to comply with a public health order that is in force at the time of the election or counting of votes, or
    - (ii) to reduce the risk of infection from COVID-19 to a scrutineer or another person present at a relevant place.
- (4) For the purposes of subsection (3), an alternative scrutiny arrangement, in relation to a place at which votes are counted, includes an arrangement that an employee of the election manager film the counting of the votes.

- (5) A direction given under this section has effect despite section 333L.
- (6) This section is repealed on 31 December 2021 at the end of the day.
- (7) In this section—  
*relevant place* means a place at which polling is carried out, ballot-papers are scrutinised or votes are counted.

### **338 Where electors may vote**

A person who is qualified as an elector in respect of a ward (or, if an area is not divided into wards, in respect of an area) is entitled to vote at any polling place appointed for the ward (or area).

### **339 Questions put to elector**

- (1) A person claiming to vote at a polling place must state to an election official the name under which the person claims to vote, and such other particulars as the official requires for the purpose of checking that name on the authorised copy of the roll.
- (2) The election official must check that the name given by the person is on the authorised copy of the roll for the ward or area for which the polling place has been appointed.
- (3) The election official may, and at the request of a scrutineer must, put to the person the following questions before giving the person a ballot-paper—
  - (a) Are you the person whose name appears as [name] on the roll for [ward of area or area]?
  - (b) Are you of or above the age of 18 years?
  - (c) Have you already voted, either here or elsewhere, at this election?
  - (d) Are you disqualified from voting at this election?
  - (e) Do you live in [ward of area or area]?
- (4) A person must not be given a ballot-paper and must not be allowed to vote if the person—
  - (a) fails to satisfy a requirement under subsection (1), or
  - (b) does not answer “yes” to questions (3)(a), (b) or (e), or
  - (c) does not answer “no” to questions (3)(c) or (d).
- (6) However, a silent elector is not required to indicate a place of living in response to a requirement under subsection (1).
- (7) This section does not prevent a person from voting—
  - (a) because of errors or omissions in the entry of the person’s name or date of birth as appearing on the authorised copy of the roll of electors if he or she satisfies the election official of his or her identity as the person referred to in the authorised copy of the roll, or
  - (b) because the person’s name is not on the authorised copy of the roll if he or she complies with Subdivision 1A of Division 7.

### **341 Delivery of ballot-paper to elector**

- (1) An election official is to deliver a ballot-paper initialled on the front by an election official to each person who is entitled to vote.
- (2) The election official is to make a notation, in the manner and form specified by the Electoral Commissioner, on the official’s authorised copy of the roll of electors to show that the elector has received a ballot-paper.

### **342 Voting**

After receiving a ballot-paper, an elector is to—

- (a) go alone to an unoccupied space set aside for voting at the polling place, and privately record his or her vote there on the ballot-paper, and
- (b) fold the ballot-paper so as to conceal the vote marked on it, and then put it in the ballot-box without unfolding it, and
- (c) leave the polling place.

## **Division 8A Voting at postal elections**

### **344 Application of Division**

This Division applies only to postal elections.

#### **344A Scrutineers**

- (1) Candidates may appoint scrutineers under section 337 to be present at the following—
  - (a) the opening and emptying of a ballot-box,
  - (b) the receipt and processing of postal vote certificate envelopes,
  - (c) the scrutiny of ballot-papers and the counting of votes.
- (5) A candidate in an election cannot be a scrutineer in relation to the same election or in relation to simultaneous elections in the same area.
- (6) Nothing in this section entitles a candidate or group to be represented by more than one scrutineer at any one place at which an activity referred to in subsection (1) is carried out.
- (7) The separate tables or stations within any building, room or other location at which ballot-papers are scrutinised or votes are counted are taken to be separate places for the purposes of subsection (6).

#### **344B Issue of postal ballot-paper**

- (1) At least 15 days before the last day of voting, the election manager must ensure that a postal ballot-paper is posted or delivered to each person whose name appears on the authorised copy of roll of electors (within the meaning of section 301 of the Act) in accordance with this section.
- (2) The election manager is to make a record that a ballot-paper is being issued to the elector and deliver or send the following to the elector—
  - (a) a ballot-paper that is initialled on the front by an election official (by hand or by electronic or mechanical means),
  - (b) an envelope on which a postal vote certificate is printed,
  - (c) if the envelope on which the postal vote certificate is printed is not addressed to the returning officer—another envelope addressed to the returning officer,
  - (d) information as to how to access the candidate information sheets of the candidates in the election that have been published on the election manager's website under section 290(4).
- (3) Ballot-papers and envelopes delivered or sent under this section to a non-resident postal voter are to be delivered or sent to the residential address of that elector.

#### **344C Postal voting procedure**

- (1) To make a postal vote, an elector is to—

- (a) show to a witness the ballot-paper and postal vote certificate delivered or sent to the elector under section 344B, and
  - (b) in the presence of the witness, and if the facts on the certificate are correct, sign the certificate in the space provided.
- (2) The witness is to sign and date the certificate in the place provided.
- (3) The elector is then to do the following in the presence of the witness, but without showing the witness how the elector has voted—
  - (a) vote as directed on the ballot-paper,
  - (b) fold the ballot-paper so that the vote cannot be seen,
  - (c) place the ballot-paper in the envelope on which the postal vote certificate is printed and close and seal the envelope,
  - (d) if the envelope on which the postal vote certificate is printed is not addressed to the returning officer—place that envelope in the envelope addressed to the returning officer and close and seal the envelope.
- (4) The elector is then to deliver or send the envelope addressed to the returning officer, or have it delivered or sent, to be received by the returning officer before 6pm on the 13th day following election day.

**344D Closing time for postal vote**

A postal vote that is not received by the returning officer before 6pm on the 13th day following election day is not valid and must not be counted.

**344E Receipt of postal ballot-papers**

- (1) If the returning officer receives an envelope containing or purporting to contain a postal ballot-paper before 6pm on the 13th day following election day, the officer is to make an appropriate record of the receipt of the envelope.
- (2) The returning officer is to place the envelope unopened in a ballot-box.  
**Note.** Section 347 provides for the preliminary scrutiny of postal voting envelopes.

**344F Request to redirect postal ballot-paper and envelope**

- (1) An elector may request in writing to the election manager to have his or her postal ballot-paper redirected to another address specified in the request.
- (2) A request to redirect a postal ballot-paper under this section must be lodged no later than 6 pm on the closing date for the election.
- (3) If an elector makes a request under this section, the election manager must ensure that a postal ballot-paper is sent or delivered to that elector at the address specified in the request.

**344G Request for replacement voting materials**

- (1) This section applies if, on or before 6 pm on the Friday 8 days before the last day of voting, an elector—
  - (a) makes a claim to an election official that the elector has not received a postal ballot-paper at the address to which the postal ballot-paper and envelope were sent, or
  - (b) makes a claim to an election official that the elector is not at the address to which the postal ballot-paper was sent and has not received a postal ballot-paper and envelope, or



- (c) makes a claim to an election official that the elector has lost or destroyed the postal ballot-paper or envelope or both, or
  - (d) satisfies an election official that he or she has spoiled the postal ballot-paper or the postal vote certificate envelope or both and returns the spoiled ballot-paper or spoiled postal vote certificate envelope or both.
- (2) If this section applies, the election official must issue the voter with whichever of the following is appropriate—
- (a) a replacement ballot-paper,
  - (b) a replacement envelope.
- (3) A postal vote certificate envelope issued under this Regulation must be identified as a replacement postal vote certificate envelope.
- (4) The returning officer must ensure that a record is kept of all ballot-papers and envelopes issued under this section.
- (5) If a spoiled ballot-paper or spoiled postal vote certificate envelope has been returned under this section, the election official must—
- (a) cancel the spoiled ballot-paper or spoiled envelope by marking it with the words “spoiled by elector”, and
  - (b) initial the spoiled ballot-paper, and
  - (c) preserve the spoiled ballot-paper or envelope until the close of voting.

## **Division 9 Scrutiny and counting**

### **345 Informal ballot-papers**

- (1) A ballot-paper of an elector at an election is informal if—
- (a) the elector has failed to record a vote on it in the manner directed on it, or
  - (b) it has not been initialled on the front by an election official, or
  - (c) it contains a mark or writing that, in the returning officer’s opinion, would enable the elector to be identified.
- (2) However, a ballot-paper is not informal in the following circumstances—
- (a) in relation to an election in which only 1 or 2 candidates are to be elected, by reason only of the elector having placed a tick or cross in one square and left the other square or squares blank, but the tick or cross is to be treated as a first preference,
  - (b) in relation to a ballot-paper on which the elector has recorded a vote by placing in one square the number “1”—
    - (i) by reason only that the elector has recorded the same preference (other than the elector’s first preference) on the ballot-paper for more than 1 candidate, but the ballot-paper is to be treated as if those preferences and any subsequent preferences had not been recorded on the ballot-paper, or
    - (ii) by reason only of there being a break in the order of preferences recorded on the ballot-paper, but the ballot-paper is to be treated as if any subsequent preference had not been recorded on the ballot-paper,
  - (c) by reason only that it is not initialled on the front by an election official if it bears the mark referred to in section 305(2),
  - (d) by reason only of having any unnecessary mark or writing on the ballot-paper if, in the opinion of the returning officer, the elector’s intention is clearly indicated on the ballot-paper,

- (e) by reason only that the elector has recorded a vote by placing the number “1” or a tick in a square and placing a cross in (or a line through) all or some of the other squares on the ballot-paper, but the ballot-paper is to be treated as if the marks in those other squares did not appear on the ballot-paper and any tick were the number “1”,
  - (f) by reason only that the elector has placed one or more numbers, a tick or one or more crosses adjacent to but outside a square or squares if, in the opinion of the returning officer, the elector’s intention is clearly indicated on the ballot-paper, but each number, tick or cross is taken to have been placed within the relevant square,
  - (g) in relation to any ballot-paper written by hand—by reason of the inclusion only of a candidate’s surname (if no other candidate with the same surname is on the ballot-paper) or by reason of any mistake in spelling, if the elector has made clear the elector’s intention.
- (3) Nothing in subsection (2) authorises any person to encourage an elector to place a tick or cross in a square on a ballot-paper.
- Note.** Section 308C of the Act makes provision concerning the formality of ballot-papers where the voter marks, crosses or ticks a group voting square, or where the ballot papers contain the name of a candidate whom a court has declared to be incapable of being elected.

#### **345A Appointment of ballot counting place**

- (1) The election manager is to—
  - (a) appoint for each area one or more places for the counting of ballot-papers for the election (*ballot counting places*), and
  - (b) publish the appointment of such ballot counting places on the election manager’s website at a time determined by the election manager.
- (2) A ballot counting place for an area may be within or outside the area concerned (including outside New South Wales and outside Australia).
- (3) A single ballot counting place may be appointed for 2 or more areas.
- (4) The election manager may abolish any ballot counting place appointed under this section. The election manager is to cause notice of any such abolition of a ballot counting place to be published on the election manager’s website at a time determined by the election manager.

#### **346 Persons present at scrutiny and count**

The Electoral Commissioner or persons authorised by the election manager, election officials, scrutineers and police officers on duty are entitled to be present at each place at which polling is carried out, ballot-papers are scrutinised or votes are counted.

#### **347 Preliminary scrutiny of postal voting envelopes**

- (1A) The returning officer may, if satisfied that an envelope on which a postal vote certificate is printed is likely to be sealed inside another envelope addressed to the returning officer (an *outer envelope*), open the outer envelope and—
  - (a) if an envelope on which a postal vote certificate is printed is sealed inside the outer envelope—take out the envelope on which the postal vote certificate is printed, or
  - (b) if an envelope on which a postal vote certificate is printed is not sealed inside the outer envelope—mark the outer envelope in a way approved by the election manager and reseal the outer envelope, or

- (c) if a ballot-paper is inside the outer envelope and the ballot-paper is not sealed inside an envelope on which a postal vote certificate is printed—mark the outer envelope in a way approved by the election manager and reseal the outer envelope.
- (1) The returning officer—
  - (a) may, on a day not more than 14 days before election day, at an approved time and place, and in the presence of scrutineers who choose to be present, produce—
    - (i) unopened envelopes containing postal votes as have been received by the returning officer, and
    - (ii) envelopes opened and resealed under (1A)(b) or (c), and
  - (b) must, at the scrutiny, produce unopened all of the following remaining envelopes containing postal votes—
    - (i) envelopes received by the returning officer up to 6pm on the 13th day following the election day,
    - (ii) in relation to an attendance election—envelopes received by any election official before 6 pm on election day under section 318(5).
- (2) The returning officer must open an envelope produced under subsection (1), unless a postal vote certificate is printed on the envelope.
- (2AA) The returning officer must—
  - (a) accept the envelope on which a postal vote certificate is printed for further scrutiny if the returning officer is satisfied the postal vote certificate has been properly signed and witnessed and that the elector is entitled to vote in the ward or area to which the postal vote certificate relates, or
  - (b) disallow the ballot-paper without opening the envelope if the returning officer is not satisfied the postal vote certificate has been properly signed or witnessed or that the elector is entitled to vote in the ward or area to which the postal vote certificate relates.
- (2A) If a ballot-paper is accompanied by, but is not inside, an envelope on which a postal vote certificate is printed that has been properly signed and witnessed, the returning officer may accept the ballot-paper for further scrutiny, but only if satisfied that the postal vote certificate relates to that ballot-paper.
- (2B) If the returning officer accepts an envelope for further scrutiny, the returning officer must do the following—
  - (a) open the envelope without destroying it,
  - (b) withdraw the postal ballot-paper,
  - (c) without inspecting the ballot-paper or allowing any other person to do so, place the ballot-paper in a ballot-box for further scrutiny.
- (3) For the avoidance of doubt, a ballot-box into which any ballot-paper has been placed under this section must not be opened before the close of voting.

### **348 Directions in relation to ballot counting places**

- (1) This section applies only to attendance elections.
- (2) An election manager may direct that a ballot-box be moved from a polling place to a ballot counting place for the scrutiny of ballot-papers and the counting of votes.
- (3) The direction may apply to all, or some, ballot-boxes from the polling place.

**348A Initial scrutiny of ballot-papers and counting of votes**

- (1) This section applies to—
  - (a) each polling place at which a ballot-box is located, and
  - (b) each ballot counting place at which a ballot-box is located.
- (2) To avoid doubt, this section applies to ballot-boxes moved under a direction made under section 348.
- (3) On the close of the poll, each counting place manager must, with the assistance of the election officials, and in the presence of any scrutineers present at the polling place or ballot counting place—
  - (a) open the ballot-box, and
  - (b) scrutinise the ballot-papers, and
  - (c) reject the informal ballot-papers, and
  - (d) place the envelopes containing postal votes and provisional votes on one side as they are taken from the ballot-box, and
  - (e) count—
    - (i) the first preferences recorded for each candidate and group of candidates, and
    - (ii) the number of informal votes, and
    - (iii) the number of envelopes containing postal vote certificates or other declarations under this Part.
- (4) The counting place manager must send to the returning officer returns for each polling place and ballot counting place in an approved form—
  - (a) stating the details of those counts, and
  - (b) signed by—
    - (i) the counting place manager and another election official, and
    - (ii) any scrutineer who desires to sign the returns.
- (5) In this section—

**counting place manager** means—

  - (a) for a polling place—the polling place manager, and
  - (b) for a ballot counting place—an election official nominated by the election manager.

**348B Ballot-papers placed in incorrect ballot-box**

- (1) This section applies if, during the initial scrutiny of ballot-papers and counting of votes under section 348A, at a polling place appointed for 2 or more areas or 2 or more wards, the polling place manager is satisfied—
  - (a) a ballot-paper was deposited in a ballot-box for the wrong area or ward for the ballot-paper, and
  - (b) the area or ward to which the ballot-paper relates is an area or ward appointed for the polling place.
- (2) An election official may arrange for the ballot-paper to be included in the scrutiny for the correct area or ward.

**349 Polling place managers to send ballot-papers to returning officer**

- (1A) This section applies only to attendance elections.

- (1) As soon as practicable after counting the votes at the polling place under section 348, the polling place manager must, in the presence of any scrutineers who choose to be present and in the approved manner, package and secure the ballot papers and other materials used and provided for use at the polling place.
- (2) The polling place manager is to do the following—
  - (a) seal the packages,
  - (b) permit any of the scrutineers who wish to do so to affix their seals to the packages,
  - (c) endorse the packages with descriptions of their contents and with the name of the ward and area, the name of the polling place, and the date of the polling,
  - (d) sign with his or her name the endorsement on each package,
  - (e) deliver or send the packages to the returning officer (except if the polling place manager's functions are being exercised by the returning officer).
- (3) The returning officer may (and must if so required by a scrutineer) have the packages opened, and have the ballot-papers scrutinised and counted in the presence of the election officials, scrutineers and police officers then present and on duty.
- (4) During such scrutiny, the returning officer must—
  - (a) reject any ballot-paper classed as formal by the polling place manager if, in the returning officer's opinion, it is informal, and
  - (b) accept any ballot-paper classed as informal by the polling place manager if, in the returning officer's opinion, it is formal.

### **350 Checking and counting of ballot-papers in sealed envelopes**

#### **(1) Postal votes**

The returning officer is, as soon as practicable after 6 pm on election day, to open the ballot-boxes containing postal ballot-papers accepted for further scrutiny under section 347, take out the ballot-papers, scrutinise them and reject the informal ones.

#### **(4) Provisional votes**

The returning officer must—

- (a) on election day (at any time after 8 am) produce all the sealed envelopes containing provisional votes cast before election day, and
- (b) on the close of poll produce all the sealed envelopes containing provisional votes cast on election day,

and deal with them in accordance with subsection (5).

- (5) The returning officer is to do the following or have the following done in relation to the envelopes referred to in subsection (4)—
  - (a) count the sealed ballot-paper envelopes unopened and record the count,
  - (b) examine the declaration on each envelope before it is opened and, if necessary, make inquiries to determine whether the person who signed the declaration was on the day of polling—
    - (i) in relation to a declaration made under section 320C—entitled to be enrolled on the residential roll for the area or ward concerned, or
    - (ii) in any other case—entitled to vote,
  - (c) if the declaration is in order and the returning officer is satisfied that the voter was, on the day of polling—
    - (i) in relation to a declaration made under section 320C—entitled to be enrolled on the residential roll for the area or ward concerned, or

- (ii) in any other case—entitled to vote,  
the returning officer is to open the envelope containing the ballot-paper, extract the ballot-paper and, without damaging the writing on the envelope, place the ballot-paper still folded in a securely fastened ballot-box for further scrutiny,
  - (d) if the declaration is not in order, or it appears to the returning officer that the elector is not entitled to vote or was, on the day of polling, not entitled to be enrolled on the residential roll for the area or ward concerned, the returning officer is to leave the envelope containing the ballot-paper unopened,
  - (e) after dealing with all the envelopes and ballot-papers in accordance with paragraphs (c) and (d), open the ballot-box, take out the ballot-papers, unfold and scrutinise them and reject the informal ones.
- (6) Despite subsection (5)(d), subsection (7) applies if—
  - (a) in relation to an envelope referred to in subsection (4), it appears to the returning officer that the elector is not entitled to vote or was, on the day of polling, not entitled to be enrolled on the residential roll for the ward (the **first ward**), but
  - (b) the person is entitled to be enrolled for another ward in the area (the **second ward**).
- (7) The returning officer must arrange for the envelope to be included in the scrutiny for the second ward in the area and, at the scrutiny for the second ward—
  - (a) if the ballot-paper is for an election of a councillor in the first ward—the ballot-paper is to be disallowed, or
  - (b) if the ballot-paper is for a council poll under the Act, Chapter 4, Part 3 applicable to the first ward—the ballot-paper is to be disallowed, or
  - (c) otherwise—the ballot-paper is to be accepted for further scrutiny and placed in a ballot-box for the second ward.

### 351 Finalising the count—attendance elections

- (1A) This section applies only to attendance elections.
  - (1) The returning officer must then do the following or have the following done—
    - (a) complete the count by including the postal, pre-poll, declared institution and provisional votes,
    - (b) ascertain the result of the count in accordance with Schedule 4 or 5, depending on the system of election,  
**Note.** Section 285 of the Act specifies the circumstances in which the optional preferential (Schedule 4) and the proportional (Schedule 5) systems of election are to be used.
    - (c) inform the persons present of the result of the count,
    - (d) immediately notify the election manager of the result of the count,
    - (e) inform the candidates (in person, in writing, by facsimile, by telephone, by email, by text message or in any other way) as soon as practicable after the result is ascertained—
      - (i) of the result of the count, and
      - (ii) when the returning officer’s declaration under section 356 will be available for inspection at the office of the relevant council, and
    - (iii) that the information contained in the returning officer’s declaration under section 356 will be published on the election manager’s website for at least one month,

- (2) For the purpose of ascertaining the result of the count, the returning officer may cause some or all of the ballot-papers to be sent to a ballot counting place appointed under section 345A to be counted in accordance with approved arrangements.

### **351A Finalising the count—postal elections**

- (1) This section applies only to postal elections.
- (2) The returning officer, as soon as practicable after 6 pm on election day, is to open the ballot-boxes containing postal ballot-papers accepted for further scrutiny under section 347, take out the ballot-papers, scrutinise them and reject the informal ones.
- (3) The returning officer must then do the following or have the following done—
  - (a) ascertain the result of the count in accordance with Schedule 4 or 5, depending on the system of election,  
**Note.** Section 285 of the Act specifies the circumstances in which the optional preferential (Schedule 4) and the proportional (Schedule 5) systems of election are to be used.
  - (b) inform the persons present of the result of the count,
  - (c) immediately notify the election manager of the result of the count,
  - (d) inform the candidates (in person, in writing, by facsimile, by telephone, by email, by text message or in any other way) as soon as practicable after the result is ascertained—
    - (i) of the result of the count, and
    - (ii) when the returning officer's declaration under section 356 will be available for inspection at the office of the relevant council, and
    - (iii) that the information contained in the returning officer's declaration under section 356 will be published on the election manager's website for at least one month.
- (4) For the purpose of ascertaining the result of the count, the returning officer may cause some or all of the ballot-papers to be sent to a ballot counting place appointed under section 345A to be counted in accordance with approved arrangements.

### **352 Double candidature: candidate elected as mayor**

- (1) If, in any election, one or more of the candidates for election as councillor for a ward in an area (or for an area) are also candidates for election as mayor of the area, the counting of votes in the election of the mayor is to be completed, and the result obtained, before any distribution of preferences in the election of councillors.
- (2) Then the count in the election of councillors is to continue, treating the person who has already been elected as mayor as not being a candidate for election as councillor.
- (3) Each preference indicated on ballot-papers in the election of councillors for the person elected as mayor is disregarded and any subsequent preferences are treated as if the numbers representing them had been reduced by one.

### **353 Recount**

- (1) At any time before the declaration of the poll—
  - (a) a candidate may request a recount of the ballot-papers used in the ward or area for which the candidate was nominated, and
  - (b) the election manager may direct the returning officer to recount any ballot-papers used in the election.
- (2) A request under subsection (1)(a) must—
  - (a) be in writing, and

- (b) be signed by the candidate, and
  - (c) set out the reasons for the request, and
  - (d) be lodged with the returning officer within 24 hours after the candidate has been informed by the returning officer of the result of the count.
- (3) The returning officer must again have the ballot-papers scrutinised and counted and, if necessary, have any other papers used at the election inspected, if—
- (b) a direction is received in accordance with subsection (1)(b), or
  - (c) the returning officer in any case believes it necessary.

**354 Who pays for the recount?**

- (1) If a recount of ballot-papers is conducted under section 353(3)(b) or (c), the council is to pay for the recount.

**355 Result of recount**

Immediately after the completion of a recount of ballot-papers, the returning officer must notify the election manager of the result of the recount.

**356 Declaring the election**

- (1) The election manager is to approve of the returning officer's declaring the election in writing as soon as practicable after the notification of the result of any recount or it becomes clear that no recount will be required.
- (2) The declaration is to be signed by the returning officer and is to state the number of votes recorded for each candidate, the names of the candidates declared elected (being the names under which those candidates were nominated by the returning officer) and the ward or area for which they have been elected.
- (3) After the election is declared, the election manager must—
- (a) display the written declaration in a conspicuous position at the office of the relevant council, and
  - (b) deliver or send a copy of the written declaration to the Secretary, the Chief Executive Officer of Local Government NSW and the relevant general manager (in relation to an election administered by the Electoral Commissioner) or the Electoral Commissioner (in relation to an election administered by an electoral services provider), and
  - (c) publish the following on the election manager's website for at least one month after the declaration—
    - (i) the information contained in the written declaration,
    - (ii) a statement that the detailed results of the election are available on the election manager's website or for inspection at the office of the relevant council,
    - (iii) any other information relating to the election the election manager considers necessary.
- (4) The general manager of a council must, on application to the council by any person, deliver or send to the person a copy of the written declaration.



## Division 9A Provisions relating to activities during regulated periods

### Subdivision 1 Preliminary

#### 356A Interpretation

- (1) In this Division—

**display** a poster or electoral material includes exhibit or post up the poster or electoral material; and **publicly display** means display, as so defined, within or within view of a public place.

**electoral material** means any thing, including without limitation a how-to-vote card, poster or advertisement, containing electoral matter (whether in a tangible or an electronic form).

**electoral matter** means—

- (a) any matter that is intended or calculated or likely to affect or is capable of affecting the result of any election held or to be held or that is intended or calculated or likely to influence or is capable of influencing an elector in relation to the casting of his or her vote at any election, or
- (b) the name of a candidate at any election, the name of the party of any such candidate, the name or address of the committee rooms of any such candidate or party, the photograph of any such candidate, and any drawing or printed matter that purports to depict any such candidate or to be a likeness or representation of any such candidate.

**how-to-vote card** means any card, handbill, pamphlet or notice having any voting directions within it, whether or not it contains—

- (a) any representation or partial representation of a ballot-paper or portion of a ballot-paper, or
- (b) any representation or partial representation apparently intended to represent a ballot-paper or portion of a ballot-paper.

**joint owner** of premises or property means one of two or more persons who own the premises or property jointly, whether as joint tenants or tenants in common or otherwise.

**poster** means any electoral matter printed, drawn or depicted on any material whatsoever and where any electoral matter is printed, drawn or depicted in sections, those sections, both severally and collectively, are to be treated as a poster.

**recognised group of candidates** means a group of candidates who have claimed under section 308A of the Act to have their names included in a group on the ballot-papers.

**regulated period** for an election means—

- (a) the period starting with the closing date and ending at 6 pm on election day, and
- (b) all days to which polling for the election is adjourned.

**street address** does not include a post office box number or a DX box number.

**voting directions** means directions or suggestions (whether express or implied) in relation to the casting of votes.

- (2) If premises or other property referred to in a provision of Subdivision 2 are subject to a lease for a term of 6 months or more, a reference in that provision to the owner or a joint owner of the premises or property is to be read as a reference to the lessee or a joint lessee of the premises or property.

## **Subdivision 2 Non-complying electoral material**

### **356B Non-complying electoral material**

For the purposes of this Division, electoral material contravenes this Subdivision if—

- (a) the material contains voting directions intended or likely to mislead or improperly interfere with an elector in or in relation to the casting of his or her vote, or
- (b) the material contains an untrue or incorrect statement intended or likely to mislead or improperly interfere with an elector in or in relation to the casting of his or her vote, or
- (c) without limiting paragraph (b), the material contains information that is incorrect or misleading about whether a person is or is not—
  - (i) a candidate for the election, or
  - (ii) a candidate for a particular area or ward, or
  - (iii) a member of a registered political party or recognised group of candidates, or
  - (iv) endorsed by a registered political party, or
- (d) the material uses—
  - (i) the name, an abbreviation or acronym of the name or a derivative of the name of a party respectively included in the Local Government Register of Political Parties (or a name or abbreviation resembling such a name, abbreviation, acronym or derivative) in a way that is intended or likely to mislead any elector, or
  - (ii) the word “Independent” and the name or an abbreviation or acronym of the name or a derivative of the name of a party respectively included in that Register in a way that suggests or indicates an affiliation with that party (unless the name of the party in that Register includes the word “Independent”), or
- (e) in the case of material that contains voting directions—any of the directions are contrary to the requirements of the Act or this Regulation or are contrary to the directions or instructions contained in the relevant ballot-papers, including (for example) a direction—
  - (i) to leave the ballot-paper blank, or
  - (ii) to write or draw unauthorised matter on the ballot-paper, or
  - (iii) to repeat or leave out a number when indicating preferences, or
- (f) the material could result in an elector casting an informal vote, or
- (g) the material contains a statement (express or implied) to the effect that voting is not compulsory, or
- (h) the material contains words that are or other matter that is obscene or offensive, or
- (i) the material is intended or likely to mislead an elector that the material is an official communication from the Electoral Commissioner, the Electoral Commission or an electoral services provider.

**356C Non-complying electoral material—additional provisions regarding how-to-vote cards**

(1) **Application of section**

Without limiting section 356B, electoral material consisting of or containing a how-to-vote card contravenes this Subdivision if the card does not comply with this section.

(2) **Non-complying how-to-vote cards for registered political parties**

A how-to-vote card containing voting directions as to how to vote for or in accordance with the recommendations of a registered political party does not comply with this section if—

- (a) the party has endorsed no candidate for the election, or
- (b) the voting directions give a preference to a candidate not endorsed by it without first giving higher preferences to all candidates endorsed by it.

(3) **Non-complying how-to-vote cards for recognised groups of candidates**

A how-to-vote card containing voting directions as to how to vote for or in accordance with the recommendations of a recognised group of candidates does not comply with this section if the voting directions give a preference to a candidate who is not a member of the group without first giving higher preferences to all candidates who are members of the group.

(4) **Non-complying how-to-vote cards for individual candidates**

A how-to-vote card containing voting directions as to how to vote for or in accordance with the recommendations of a particular candidate does not comply with this section if—

- (a) whether or not the candidate is a member of a recognised group of candidates—the voting directions do not contain a voting direction for the candidate to receive the first preference, or
- (b) where the candidate is a member of a recognised group of candidates—the voting directions give a preference to a candidate who is not a member of the group without first giving higher preferences to all candidates who are members of the group.

(5) **Non-complying how-to-vote cards using group voting squares—voting above and below the line**

A how-to-vote card containing voting directions as to how to vote for or in accordance with the recommendations of a recognised group of candidates by using a group voting square does not comply with this section if the voting directions also give preferences (“below the line”) for—

- (a) some only of the individual members of the group, or
- (b) individual members of the group in a different order from that appearing in the list of candidates in the group on the ballot-paper.

**Note.** Subsection (5) ensures that in these circumstances the material must be internally consistent, since voting by using a group voting square implies voting for all the candidates in the group and in the order in which their names appear.

(6) **Non-complying how-to-vote cards without group voting squares—no indication of requirement to vote for at least half the candidates**

A how-to-vote card containing voting directions as to how to vote without using group voting squares and that do not give preferences for at least half the number of candidates to be elected does not comply with this section if the voting directions do

not contain a statement as to how many other preferences must be marked on the ballot-paper.

(7) **Non-complying how-to-vote cards relating to two or more areas**

A how-to-vote card containing voting directions does not comply with this section if the voting directions relate to two or more areas.

### **Subdivision 3 Offences applicable during regulated period**

#### **356D Printing, publishing and distributing non-complying electoral material**

A person must not, during the regulated period, print, publish or distribute electoral material that contravenes Subdivision 2.

Maximum penalty—10 penalty units.

#### **356E Display of posters**

- (1) A person must not, during the regulated period, publicly display or permit or cause to be publicly displayed, a poster containing or consisting of electoral material that contravenes Subdivision 2.

Maximum penalty—10 penalty units.

- (2) A person must not, during the regulated period, display or permit or cause to be displayed a poster—

- (a) on or within any premises occupied or used by, or under the control or management of—

- (i) the Crown or a NSW Government agency, or  
(ii) any council, county council or joint organisation, or

- (b) on or within any other premises, unless the person—

- (i) was the owner or a joint owner of the premises, or  
(ii) performed the act concerned with the permission in writing of the owner or a joint owner of the premises.

Maximum penalty—2.5 penalty units.

- (3) Subsection (2)(a) does not apply in relation to a poster—

- (a) on the outer wall, fence or other boundary of the grounds of an enclosure in which a building used for polling is situated, or  
(b) within the grounds of an enclosure in which a building used for polling is situated, or  
(c) on a vehicle on a road or road related area (within the meaning of section 4(1) of the *Road Transport Act 2013*), or  
(d) fixed or attached to a table or stall on a footpath or other public place at any time on the day of polling for an election.

#### **356F Writing, drawing or depicting electoral matter**

- (1) A person must not, during the regulated period, write, draw or depict any electoral matter directly on any property, being a roadway, footpath, building, vehicle, vessel, hoarding or place (whether it is or is not a public place and whether on land or water).

Maximum penalty—3 penalty units.

- (2) A person is not guilty of an offence under this section if the person—

- (a) was the owner or joint owner of the property, or

- (b) performed the act concerned with the permission in writing of the owner or a joint owner of the property.
- (3) Without limiting subsection (2), a person is not guilty of an offence under this section involving a vehicle, vessel or hoarding if the person—
  - (a) was the owner or joint owner of the premises on which the vehicle, vessel or hoarding was situated, or
  - (b) performed the act concerned with the permission in writing of the owner or a joint owner of the premises.
- (4) Subsections (2) and (3) do not apply to any premises or property occupied or used by, or under the control or management of—
  - (a) the Crown or a NSW Government agency, or
  - (b) any council, county council or joint organisation.

### **356G Name and address on electoral material**

- (1) A person must not, during the regulated period, print, publish, distribute or publicly display electoral material (other than the announcement in a newspaper of the holding of a meeting), without legibly showing on the material—
  - (a) the name and address of the person on whose instructions the material was printed, published, distributed or displayed, and
  - (b) if the material has been printed, the name of the printer and the street address of the premises at which it was printed.

Maximum penalty—5 penalty units.

- (2) If a newspaper contains electoral material and the name of the printer of the newspaper and the street address of the premises at which it was printed appear on the newspaper in accordance with any Act, subsection (1) does not require that name and address to be shown separately on the material itself.
  - (3) Subsection (1) does not apply in relation to—
    - (a) a T-shirt, lapel button, lapel badge, pen, pencil or balloon, or
    - (b) a business or visiting card that promotes the candidacy of any person in an election, or
    - (c) a letter or other card—
      - (i) that bears the name and address of the sender, and
      - (ii) that does not contain a representation or purported representation of a ballot paper for use in an election.
  - (4) Subsection (1) does not apply in relation to the following—
    - (a) a social media post made by an electoral participant (or on behalf of an electoral participant by an officer, employee or agent of the electoral participant), but only if—
      - (i) the name and address of the electoral participant was included in or directly linked to the post, and
- Note.** For example, a name and address may—
- (a) be included at the end of a post, or
  - (b) be included in a photograph or image attached to or embedded in the post, or
  - (c) be included in the “about”, “bio” or “impressum” part of the webpage or profile of the person who made the post (or on whose behalf the post was made) that is accessible via a hyperlink or URL included in or accompanying the post.

- (ii) no amount was paid to the social media platform provider concerned in connection with the printing, publication, distribution or public display of the post,
  - (b) a social media post that was not made by an electoral participant (or on behalf of an electoral participant), but only if no amount was paid to the social media platform provider concerned in connection with the printing, publication, distribution or public display of the post.
- (5) In this section—

**address** of a person means an address, including a full street address and suburb or locality, that is located in Australia at which the person can usually be contacted during the day, but does not include a post office box.

**associated entity** means a person or body that operates solely for the benefit of one or more registered political parties or one or more councillors (including the mayor) of a council.

**electoral participant** means any of the following—

- (a) a candidate,
- (b) a group of candidates,
- (c) a registered political party,
- (d) a registered officer of a registered political party,
- (e) a third-party campaigner (within the meaning of paragraph (b) of the definition of **third-party campaigner** in section 4 of the *Electoral Funding Act 2018*),
- (f) an associated entity.

**356GA Authorisation of advertisements on electronic billboards, digital road signs etc to be displayed**

A person must not, during the regulated period, display any electoral matter on an electronic billboard, digital road sign or other similar device, unless the matter contains, in visible, legible characters, the name and address of the person on whose instructions the matter was displayed.

Maximum penalty—5 penalty units.

**356GB Publication of paid electoral advertisements on the internet**

- (1) A person must not, during the regulated period, publish an advertisement containing electoral matter on the internet, or cause, permit or authorise such an advertisement to be published, if—
- (a) the advertisement is paid for by the person or another person, and
  - (b) the name and address of the person who authorised the advertisement do not appear at the end of the advertisement.

Maximum penalty—5 penalty units.

- (2) A person does not commit the offence in subsection (1) if the person establishes that the matter published on the internet forms part of a general commentary on a website.
- (3) In this section, the **address** of a person means an address, including a full street address and suburb or locality, that is located in Australia at which the person can usually be contacted during the day, but does not include a post office box.

**356H Encouraging ticks or crosses on ballot-papers**

A person must not, during the regulated period, print, publish, distribute or publicly display any electoral material that encourages any elector to place a tick or a cross in a square on a ballot-paper.

Maximum penalty—

- (a) in the case of corporation—50 penalty units, or
- (b) in any other case—10 penalty units.

### **356I Defences and exceptions**

#### **(1) Defences**

A person is not guilty of an offence for a breach of a provision of this Subdivision if it is established that—

- (a) the breach was not of a material nature, or
- (c) the person was not aware that the act or omission concerned was a breach of the provision when it occurred and took all reasonable steps to remedy the breach when the person became aware that it was or may have been such a breach.

(1A) A person is not guilty of an offence for a breach of the following provisions of this Subdivision if it is established that the breach was not intended, or was not likely, to mislead an elector in or in relation to the casting of the elector's vote—

- (a) section 356D or 356E, to the extent that the offence relates to a contravention of section 356B(e) or (f) or 356C(6),
- (b) section 356H.

#### **(2) Exceptions**

Nothing in this Subdivision prohibits—

- (a) the display, writing, drawing or depicting of a sign on or at the office or committee room of a candidate or political party indicating only that the office or room is the office or committee room of the candidate or party, and specifying the name of the candidate, or the names of the candidates, or the name of the party concerned, or
- (b) the projection by means of any cinematograph or other similar apparatus of any electoral matter on to any screen in any theatre or public hall the subject of a development consent in force under the *Environmental Planning and Assessment Act 1979* in relation to its use as a place of public entertainment, or
- (c) the display, writing, drawing or depicting of any poster within a hall or room that is being or is about to be used for a meeting held by or on behalf of a candidate in connection with an election, or
- (d) the display of any poster on or at the office of a councillor.

## **Subdivision 4 Additional offences applicable on pre-poll voting days**

### **356J Display of posters on pre-poll voting days**

#### **(1) Posters at pre-poll voting office**

A person must not display, or cause to be displayed, any poster of any size—

- (a) within a pre-poll voting office, or
  - (a1) within 6 metres of an entrance to a pre-poll voting office, or
  - (b) on the exterior of a building used as a pre-poll voting office, on any day on which pre-poll voting is conducted at the pre-poll voting office.
- Maximum penalty—5 penalty units.

(2) **Application of this section to grounds of enclosure**

If—

- (a) a building used as a pre-poll voting office is situated in grounds within an enclosure, and
  - (b) the appointment by the election manager of the pre-poll voting office does not indicate whether or not the grounds are part of the pre-poll voting office,
- the grounds are not, but the building is, taken to be part of the pre-poll voting office for the purposes of subsection (1), unless a notice to the contrary is displayed under section 356U. If such a notice is displayed, the grounds are taken to be part of the pre-poll voting office for the purposes of subsection (1).

**356K Canvassing on pre-poll voting days**

(1) **Canvassing in or near pre-poll voting office**

A person must not—

- (a) canvass for votes, or
- (b) solicit the vote of any elector, or
- (c) induce any elector not to vote for any particular candidate or group of candidates, or
- (d) induce any elector not to vote at the election,

within a pre-poll voting office or within 6 metres of an entrance to a pre-poll voting office on any day on which pre-poll voting is conducted at the pre-poll voting office.  
Maximum penalty—5 penalty units.

(2) **Amplified canvassing audible in or near pre-poll voting office**

A person must not contravene this subsection. This subsection is contravened if on any day on which pre-poll voting is conducted at a pre-poll voting office each of the following paragraphs apply—

- (a) the person engages in—
  - (i) canvassing for votes, or
  - (ii) soliciting the vote of an elector, or
  - (iii) inducing an elector not to vote for a particular candidate or group of candidates, or
  - (iv) inducing an elector not to vote at the election, and
- (b) the person engages, in any public or private place, in that activity 6 metres or more from an entrance to a pre-poll voting office, and
- (c) the person uses any of the following to engage in that activity—
  - (i) a loud speaker,
  - (ii) a public address system,
  - (iii) an amplifier (whether fixed or mobile),
  - (iv) a broadcasting van,
  - (v) a sound system,
  - (vi) radio equipment,
  - (vii) any other equipment or device for broadcasting, and
- (d) that activity is audible within the pre-poll voting office or within 6 metres of an entrance to the pre-poll voting office.

Maximum penalty—5 penalty units.



(3) **Canvassing includes distributing electoral material**

Without limiting the generality of subsection (1), a reference to canvassing for votes includes a reference to distributing electoral material, whether or not the material is registered in accordance with Subdivision 6.

(4) **Application of this section to grounds of enclosure**

If—

(a) a building used as a pre-poll voting office is situated in grounds within an enclosure, and

(b) the appointment by the election manager of the pre-poll voting office does not indicate whether or not the grounds are part of the pre-poll voting office,

the grounds are not, but the building is, taken to be part of the pre-poll voting office for the purposes of this section, unless a notice to the contrary is displayed under section 356U. If such a notice is displayed, the grounds are taken to be part of the pre-poll voting office for the purposes of this section.

**356KA Interference with posters**

The owner or occupier of premises that are being used as a pre-poll voting office must not, without reasonable excuse, interfere with or remove or cause to be removed any poster that is exhibited or posted at those premises in compliance with the provisions of this Division.

Maximum penalty—10 penalty units.

## **Subdivision 5 Additional offences applicable on election days**

**356L Extended operation of this Subdivision**

(1) In the application of this Subdivision to electoral material, electoral matter is, without limiting the definition of that term in section 356A, taken to include any matter consisting of an express or implicit reference to or comment on—

(a) an election, or

(b) any council or any previous council, or

(c) any councillor or previous councillor, or

(d) the Government, the Opposition, a previous Government or a previous Opposition, of this or any other State or Territory or of the Commonwealth, or

(e) a member or former member of the Parliament of this or any other State or Territory or of the Commonwealth, or

(f) a political party, a branch or division of a political party or a candidate in an election, or

(g) an issue submitted to, or otherwise before, the electors in connection with an election.

(2) References in this Subdivision to election day include references to all days to which polling is adjourned.

**356M Distribution of electoral material on election days**

(1) A person must not, in a public place, distribute any electoral material on election day unless the material has been registered under Subdivision 6 for the election.

Maximum penalty—10 penalty units.

(2) For the purposes of this section and without limiting its operation, material is taken to be distributed if it is left in such a position and in such circumstances as to indicate

that it is intended to be available for collection by members of the public who are in a public place.

- (3) This section does not apply to the handing out, distribution, sale or otherwise making available of a newspaper by or on behalf of a newsagent, newspaper seller or distributor if the handing out, distribution, sale or making available is in the course of the newsagent's, newspaper seller's or distributor's employment or business.

### **356N Display of posters**

#### **(1) Posters at polling place**

A person must not, on election day, display or cause to be displayed any poster of any size—

- (a) within a polling place, or
- (b) within 6 metres of an entrance to a polling place, or
- (c) on the exterior of a building used as a polling place.

Maximum penalty—5 penalty units.

#### **(4) Application of this section to grounds of enclosure**

If—

- (a) a building used as a polling place is situated in grounds within an enclosure, and
- (b) the appointment by the election manager of the polling place does not indicate whether or not the grounds are part of the polling place,

the grounds are not, but the building is, taken to be part of the polling place for the purposes of this section, unless a notice to the contrary is displayed under section 356U. If such a notice is displayed, the grounds are taken to be part of the polling place for the purposes of this section.

**Note.** The display of election posters also constitutes development for the purposes of the *Environmental Planning and Assessment Act 1979*. Subdivision 13 of Division 2 of Part 2 of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* provides that the display of election posters is exempt development, subject to conditions, during the period commencing 5 weeks before and ending 1 week after the election day concerned.

### **356NA Interference with posters**

The owner or occupier of premises that are being used as a polling place must not interfere with or remove or cause to be removed any poster that is exhibited or posted at those premises in compliance with the provisions of this Division.

Maximum penalty—10 penalty units.

### **356O Canvassing on election days**

#### **(1) Canvassing in or near polling place**

A person must not—

- (a) canvass for votes, or
- (b) solicit the vote of any elector, or
- (c) induce any elector not to vote for any particular candidate, or
- (d) induce any elector not to vote at the election,

on election day—

- (e) within a polling place, or
- (f) within 6 metres of an entrance to a polling place.

Maximum penalty—5 penalty units.

(2) **Amplified canvassing audible in or near polling place**

A person must not contravene this subsection. This subsection is contravened if on election day each of the following paragraphs apply—

- (a) the person engages in—
  - (i) canvassing for votes, or
  - (ii) soliciting the vote of an elector, or
  - (iii) inducing an elector not to vote for a particular candidate, or
  - (iv) inducing an elector not to vote at the election, and
- (b) the person engages, in any public or private place, in that activity 6 metres or more from an entrance to a polling place, and
- (c) the person uses any of the following to engage in that activity—
  - (i) a loud speaker,
  - (ii) a public address system,
  - (iii) an amplifier (whether fixed or mobile),
  - (iv) a broadcasting van,
  - (v) a sound system,
  - (vi) radio equipment,
  - (vii) any other equipment or device for broadcasting, and
- (d) that activity is audible—
  - (i) within the polling place, or
  - (ii) within 6 metres of an entrance to the polling place.

Maximum penalty—5 penalty units.

(3) **Canvassing includes distributing electoral material**

Without limiting the generality of subsection (1), a reference to canvassing for votes includes a reference to distributing electoral material, whether or not the material is registered in accordance with Subdivision 6.

(4) **Application of this section to grounds of enclosure**

If—

- (a) a building used as a polling place is situated in grounds within an enclosure, and
- (b) the appointment by the election manager of the polling place does not indicate whether or not the grounds are part of the polling place,

the grounds are not, but the building is, taken to be part of the polling place for the purposes of this section, unless a notice to the contrary is displayed under section 356U. If such a notice is displayed, the grounds are taken to be part of the polling place for the purposes of this section.

## **Subdivision 6 Registration of electoral material**

### **356OA Definition**

In this Subdivision, *electoral material registrar* means—

- (a) in relation to an election administered by an electoral services provider—the relevant returning officer, or
- (b) in relation to an election administered by the Electoral Commissioner—the Electoral Commissioner.

**356P Application for registration of electoral material**

**(1) Application for registration may be made**

For the purposes of section 356M, an application may be made to the electoral material registrar for the registration of electoral material for a particular area for any one or more of the following—

- (a) a particular election of one or more councillors,
- (b) a particular election of mayor by electors,
- (c) a particular constitutional referendum, or two or more particular constitutional referendums being held at the same time,
- (d) a particular council poll, or two or more particular council polls being held at the same time.

**(2) Applications by or on behalf of parties, groups or candidates**

An application may be made—

- (a) by the registered officer of a registered political party—on behalf of the party, or
- (b) by the first candidate listed in a recognised group of candidates—on behalf of the group, or
- (c) by a candidate—on his or her own behalf.

**(3) Applications by or on behalf of others**

An application may be made—

- (a) by an officer or representative of an incorporated or unincorporated body (other than a registered political party or a recognised group of candidates) who is not a candidate—on behalf of the body, or
- (b) by an individual who is not a candidate—on his or her own behalf.

**(4) Timing of application**

An application may be made only during the period starting with nomination day and ending at 5 pm on the Friday that is 8 days before election day.

**(5) Draft or sample to be provided**

An application must contain a draft or sample of the electoral material.

**(6) Alteration or replacement of draft or sample**

The electoral material registrar may allow the draft or sample to be altered or replaced during the period specified in subsection (4) before agreeing to registration.

**(7) Preliminary advice**

A person authorised by subsection (2) or (3) to apply for registration of electoral material may, during the period specified in subsection (4), apply to the electoral material registrar for preliminary advice as to whether particular electoral material may be registered.

**(8)** The electoral material registrar may provide that advice, even if the material is incomplete, but the application for registration of the material must nevertheless be made during that period.

**(9) Manner and form of application**

An application under this section—

- (a) is to be in the approved form, and

- (b) is to be verified by the applicant in the approved manner (if any), and  
**Note.** For example, a written application may be verified by the signature of the applicant.
- (c) may be lodged in written or electronic form.

**356Q Consideration of application for registration**

**(1) Complying material must be registered**

The electoral material registrar must register the electoral material if satisfied that registration is not prohibited by this Subdivision.

**(2) Refusal for non-complying application**

However, the electoral material registrar may refuse to register the electoral material if the application for registration was not made in accordance with this Subdivision.

**(3) When material must be refused registration**

The electoral material registrar must not register the electoral material if it appears to the electoral material registrar that—

- (a) the material contravenes Subdivision 2, or
- (b) the material is, or contains a section, in a language other than English and the application for registration was not accompanied by—
  - (i) an accurate translation into English of the material or section, and
  - (ii) a declaration that the translation is accurate, or
- (c) the material does not include in legible characters—
  - (i) the name and address of the person on whose instructions the material was printed, published, distributed or displayed, and
  - (ii) if the material has been printed, the name of the printer and the street address at which it was printed, or
- (c1) the material does not clearly identify the person, political party, organisation or group on whose behalf the material is to be distributed, or
- (d) in the case of an application for registration purporting to be made on behalf of an entity referred to in section 356P(2) or (3)—the application was not made by a person authorised by the relevant subsection to make the application, or
- (e) in the case of an application not purporting to be made on behalf of an entity referred to in section 356P(2) or (3) for the registration of material that contains voting directions as to how to vote for or in accordance with the recommendations of such an entity—the application was not made by a person authorised by the relevant subsection to make an application on behalf of the entity, or
- (f) in the case of an application for the registration of material that contains any representation or indication (whether express or implied) that any candidate—
  - (i) is a member of, or
  - (ii) pursues or supports any or all of the objects or platform (whether with or without modification) of, or
  - (iii) is affiliated in some way (whether officially or unofficially) with, a particular registered political party or recognised group of candidates—the application was not made by or with the consent of the registered officer of the party or the first candidate listed in the group.

(4) **Offence for false statement in declaration about translated material**

A person must not make a declaration for the purposes of subsection (3)(b) knowing that the translation of the material or section is inaccurate in a material respect.

Maximum penalty—10 penalty units.

(5) **Inquiries as to authenticity of application or consent**

The electoral material registrar may make such inquiries as the electoral material registrar thinks fit to confirm the authenticity of—

- (a) an application, or
- (b) any consent referred to in subsection (3)(f).

**356R Registration of electoral material**

(1) **Certificate of registration**

Registration of the electoral material is effected by the issue of a certificate of registration in respect of a draft or sample of the electoral material.

(2) **Details to be included in certificate**

The certificate of registration must specify—

- (a) the elections, constitutional referendums and council polls, and
- (b) the area,

for which the electoral material is registered.

(2A) **Form of certificate**

A certificate of registration issued under this section is to be in the approved form.

(3) **Registration may be conditional or unconditional**

Registration may be unconditional or subject to conditions specified in the certificate of registration.

(4) **Evidence of registration**

A certificate signed by the electoral material registrar and certifying that specified material was or was not registered—

- (a) on a specified day or during a specified period, or
- (b) for a particular election, constitutional referendum or council poll, or
- (c) for a particular area,

is admissible in proceedings for an offence under section 356G and is prima facie evidence of the matters certified.

(5) **Immaterial differences not to affect registration**

Electoral material is to be taken to be registered in accordance with this section even though the material contains some differences from the draft or sample in respect of which the certificate of registration was issued, so long as the material is substantially the same as the draft or sample.

(6) **Registration not a defence for certain offences**

Registration of electoral material is not a defence to a prosecution for an offence under Subdivision 3 or 4.

(7) **Copy of material and certificate to be available for inspection**

A copy of electoral material registered under this section and the relevant certificate of registration must be made available for public inspection on the election

manager's website during the hours of polling on election day and on all the days to which the polling is adjourned.

- (8) The election manager is not required to make copies of registered electoral material or certificates of registration.

### **356S Revocation of registration or imposition of condition on registration**

- (1) If the electoral material registrar is satisfied that electoral material was erroneously registered, the electoral material registrar may—
- (a) revoke the registration of the material, or
  - (b) attach a condition to the registration of the material, requiring the material to be altered in a specified way, whether by way of omitting matter or inserting matter or both, or otherwise.
- (2) The revocation or condition takes effect from the time the revocation or condition is communicated to the candidates concerned or their representatives, and accordingly—
- (a) electoral material whose registration has been revoked ceases to be registered from that time, and
  - (b) electoral material to whose registration a condition has been attached is from that time taken to be registered only if the condition is complied with.

## **Subdivision 7 Miscellaneous**

### **356SA Maintenance of order at and near polling places**

- (1) A police officer may remove a person from a polling place or the immediate vicinity of a polling place if the police officer has reasonable grounds to believe the person is committing, has committed or is attempting to commit an offence under the Act or this Regulation at that polling place or in the immediate vicinity of that polling place.
- (2) A police officer may remove or cause to be removed from a polling place and from the immediate vicinity of the polling place any person—
- (a) who, having been given a lawful direction by or under the authority of the Electoral Commissioner or polling place manager, fails to comply with that direction, or
  - (b) who is obstructing the access or approaches to the polling place, or
  - (c) who is obstructing or unnecessarily delaying the proceedings at the polling place, or
  - (d) who is behaving in a disorderly manner or is causing a disturbance.
- (3) The Electoral Commissioner and every polling place manager may give such directions as are necessary to maintain order at any election or any place where voting is occurring under the Act.
- (4) A person must not, without lawful authority, contravene any such direction.  
Maximum penalty (subsection (4)): 10 penalty units.

### **356T Confiscation of posters and other electoral material**

#### **(1) Confiscation by election officials**

The returning officer or any polling place manager, or any other election official authorised by the returning officer or the polling place manager, may remove and confiscate, or cause to be removed and confiscated—

- (a) any poster displayed in contravention of Subdivision 4 or 5, or

(b) any electoral material that is apparently available for distribution in contravention of Subdivision 5.

(2) **Confiscation by police**

Any police officer may remove and confiscate, or cause to be removed and confiscated—

(a) any poster displayed in contravention of Subdivision 3, 4 or 5, or

(b) any electoral material that is apparently available for distribution in contravention of Subdivision 5.

(3) **Use of force**

A police officer may use reasonable force for the purposes of this section. This section does not authorise any other person to use force.

(4) **Confiscated material to be destroyed**

Confiscated electoral material must be destroyed without undue delay, but destruction may be delayed if the material is or may reasonably be required for evidentiary purposes.

**356TA Posters—arrangements for COVID-19 pandemic**

(1) Despite section 356E, the election manager may direct that a person must not display a poster in or on—

(a) a polling place or pre-polling office, or

(b) relevant premises within 100 metres of—

(i) a polling place, or

(ii) a pre-polling office.

(2) A direction under subsection (1) may be given only if the election manager is satisfied the direction is necessary—

(a) to comply with a public health order that is in force at the time of the election, or

(b) to reduce the risk of infection from COVID-19 where the poster would be displayed.

(3) Notice of the direction must be published on the election manager's website.

(4) If a direction is made, the election manager may publish links to election material published by the political participants on the election manager's website.

(5) If an election official is satisfied that a poster contravenes the direction, the election official may remove and confiscate the poster, or cause the poster to be removed and confiscated.

(6) A poster removed and confiscated under this section may be destroyed.

(7) This section is repealed on 31 December 2021 at the end of the day.

(8) In this section—

*relevant premises* means premises occupied or used by, or under the control or management of—

(a) the Crown, or

(b) a NSW agency, or

(c) a council, county council or joint organisation.



**356TB Handing out electoral materials—arrangements for COVID-19 pandemic**

- (1) The election manager may direct that a person must not hand out tangible electoral material in or on—
  - (a) a polling place or pre-polling office, or
  - (b) relevant premises within 100 metres of—
    - (i) a polling place, or
    - (ii) a pre-polling office.
- (2) A direction under subsection (1) may be given only if the election manager is satisfied the direction is necessary—
  - (a) to comply with a public health order that is in force at the time of the election, or
  - (b) to reduce the risk of infection from COVID-19 where the material would be handed out.
- (3) Notice of the direction must be published on the election manager’s website.
- (4) If a direction is made, the election manager may publish links to electoral material published by the political participants on the election manager’s website.
- (5) If an election official is satisfied that a person has contravened the direction, the election official may remove and confiscate, or cause to be removed and confiscated, any tangible electoral material.
- (6) Electoral material removed and confiscated under this section may be destroyed.
- (7) The extension of the meaning of electoral material under section 356L applies to electoral material for the purposes of this section.
- (8) This section is repealed on 31 December 2021 at the end of the day.
- (9) In this section—

**relevant premises** means premises occupied or used by, or under the control or management of—

  - (a) the Crown, or
  - (b) a NSW agency, or
  - (c) a council, county council or joint organisation.

**356U Notice applying provisions to grounds of polling place**

- (1) This section applies for the purposes of sections 356J, 356K, 356N or 356O, in a case where—
  - (a) a building used for polling is situated in grounds within an enclosure, and
  - (b) the appointment by the election manager of the pre-poll voting office or polling place concerned does not indicate whether or not the grounds are part of the pre-poll voting office or polling place.
- (2) The returning officer may, with the concurrence of the election manager, cause a notice to be displayed, during the hours of polling, at each entry to the grounds stating that those grounds are treated as part of the pre-poll voting office or polling place.

**Note.** Sections 356J(2), 356K(4), 356N(4) and 356O(4) state the effect of displaying such a notice.

**356V Official notices**

Nothing in this Division applies to the printing, publishing, distribution or display of official notices.

**356W Double jeopardy**

A person is not liable to be convicted of both an offence under Subdivision 3 and an offence under Subdivision 4 or 5 if the offences arose out of the same circumstances.

**Division 10 Offences**

**357 Penalty notices**

For the purposes of section 314 of the Act, the prescribed form of a penalty notice is Form 15.

**358 Misconduct in voting**

- (1) A person must not do any of the following—
  - (a) make a declaration (whether oral or written) that the person knows is false in respect of any matter or thing for which a declaration is required by this Regulation,
  - (b) impersonate an elector for the purpose of voting at an election,
  - (c) vote twice at an election,
  - (d) knowingly put more than one ballot-paper in the ballot-box at a polling place (except if each of those ballot-papers relates to a different poll),
  - (e) influence an elector's vote by threats or inducements.

Maximum penalty—10 penalty units.

- (2) This section applies in relation to an election under section 395 or 396 and to a constitutional referendum or council poll in the same way as it applies to elections under Chapter 10 of the Act.

**359 False statements in forms**

- (1) A person must not make a statement that the person knows is false in a paper relating to an election or poll under the Act, or in information supplied to the Electoral Commissioner or a general manager for the purposes of the preparation, maintenance, or revision of an electoral roll under the Act.
- (2) A person must not induce another person to make such a statement.

Maximum penalty—10 penalty units.

**360 Misconduct by witness to postal vote**

- (1) A witness must not witness the signature of an elector to an application for a postal ballot-paper and a postal voting envelope unless the witness knows that the statements contained in the application are true, or is satisfied by the applicant's answers to the witness's inquiries or by other means that the statements contained in the application are true.

Maximum penalty—5 penalty units.

- (2) The witness must not—
  - (a) do anything to find out the elector's vote, or
  - (b) disclose to a third party any knowledge that the witness has of the vote of the elector, or
  - (c) influence the vote of an elector voting by post in the presence of the witness.

Maximum penalty—10 penalty units.

**361 Misconduct in relation to postal voting**

A person to whom an application for a postal ballot-paper and a postal voting envelope, or an envelope containing or purporting to contain a postal ballot-paper, is given by an elector for the purpose of delivery or sending to a returning officer, who has agreed to deliver or send the application or envelope, and who without reasonable excuse fails to deliver or send the application or envelope promptly is guilty of an offence.

Maximum penalty—10 penalty units.

**362 Misconduct by person present at pre-poll or declared institution voting**

- (1) A person who is present when an elector is attending a pre-poll voting office or other place for the purpose of voting before election day or when an elector is visited by a pre-poll voting officer for the purpose of voting at a declared institution—
    - (a) must comply with a lawful direction given to the person by an election official, and
    - (b) must not communicate with the elector in relation to the vote, and
    - (c) must not assist the elector or in any manner interfere with the elector in relation to the vote, and
    - (d) must not look at the elector's vote or do anything to find out how the elector voted.
  - (2) A person is not guilty of an offence against this section by virtue of anything done in accordance with section 388.
- Maximum penalty—10 penalty units.

**363 Other misconduct in relation to postal, pre-poll or declared institution voting**

A person other than the elector must not mark or purport to mark a vote on a postal or pre-poll ballot-paper or a ballot-paper handed to an elector at a declared institution unless the person in so doing is acting under section 388.

Maximum penalty—10 penalty units.

**364 Breach of secrecy**

An election official or scrutineer who knows how a particular elector has voted must not disclose that knowledge.

Maximum penalty—5 penalty units.

**365 Obstruction of election officials**

A person must not hinder or obstruct an election official or scrutineer in the exercise or performance of his or her functions.

Maximum penalty—10 penalty units.

**366 False answers to questions put by election officials**

A person who, knowing the answer to be untrue, answers a question put to the person by an election official under Division 8 is guilty of an offence.

Maximum penalty—10 penalty units.

**367 Obstructing access**

A person must not obstruct access to—

- (a) a polling place, a pre-poll voting office or a place being used for voting under section 332A, or

- (b) a space set aside for voting at a polling place, a pre-poll voting office or a place being used for voting under section 332A.

Maximum penalty—0.5 penalty unit.

### **368 Persons present in polling place**

- (1) A person must not remain in a polling place during polling or during the counting or the scrutiny of the ballot-papers.
- (2) A person must not, without lawful authority, proof of which lies on the person—
  - (a) enter or remain at a polling place, or
  - (b) refuse to leave the polling place on being required to leave by an election official, or by a police officer acting under the direction or authority of an election official.

**Note**— See section 356SA in relation to maintenance of order at and near polling places by police officers.

- (3) This section does not prevent—
  - (a) the election manager, election officials, scrutineers, and police officers on duty, from being present during those times, or
  - (b) persons engaged in voting (and not exceeding the number determined by the returning officer) from being present during polling for as long as is necessary in order for them to vote.

Maximum penalty—5 penalty units.

### **369 Misconduct by scrutineers**

- (1) A scrutineer must not, at a place where polling is carried out, ballot-papers are scrutinised or votes are counted—
  - (a) interfere with, influence or attempt to influence an elector or an election official, or
  - (b) communicate with a person except as necessary to carry out the scrutineer's functions.
- (1A) An election official may direct a scrutineer to leave a place if the election official believes on reasonable grounds that—
  - (a) the scrutineer's presence is contrary to this Part, or
  - (b) the person is contravening or has contravened any provision of this Part or is committing or has committed any other offence at the place.
- (2) A scrutineer must obey the lawful directions of an election official.
- (3) A scrutineer does not breach subsection (1) merely by wearing the badge or emblem of a candidate or political party.
- (4) Without limiting section 356SA, a scrutineer who, within a polling place, pre-poll voting office, ballot counting place or declared institution or mobile booth, does any of the following, may be removed from the place by a police officer on the request of an election official—
  - (a) contravenes this section,
  - (b) engages in misconduct,
  - (c) fails to obey the lawful direction of the election official.

Maximum penalty—10 penalty units.

**370 Misconduct at polling place or pre-poll voting office**

A person must not, without lawful authority—

- (a) remove a ballot-paper from a polling place or pre-poll voting office, or
- (b) enter a space set aside for voting in a polling place while another person is in that space, or
- (c) remain in a space set aside for voting in a polling place or at a pre-poll voting office for a longer period than is necessary for the purpose of marking his or her ballot-paper, or
- (d) obstruct or unnecessarily delay the proceedings at a polling place or pre-poll voting office.

Maximum penalty—10 penalty units.

**371 Improperly signing or witnessing electoral papers**

A person must not do any of the following—

- (a) sign as witness a blank electoral paper,
- (b) sign as witness an electoral paper that has been wholly or partly filled up unless it has been signed by the signatory,
- (c) sign as witness an electoral paper unless the person has seen the signatory sign it,
- (d) write a name that is not his or her own name on an electoral paper as his or her own name,
- (e) sign an electoral paper with a signature that purports to be that of another person.

Maximum penalty—10 penalty units.

**372 Forging or uttering electoral papers**

A person must not forge an electoral paper or utter a forged electoral paper, knowing it to be forged.

Maximum penalty—10 penalty units.

**373 Stuffing ballot-boxes**

- (1) A person must not place in a ballot-box a ballot-paper that the person knows has not been lawfully issued to an elector.
- (2) An elector must not place in the ballot-box a paper other than the ballot-paper issued to him or her.

Maximum penalty—10 penalty units.

**374 Opening sealed parcels**

A person must not intentionally break open a sealed parcel of ballot-papers or other electoral material unless authorised to do so by the returning officer or the election manager or required or authorised to do so by or under any legislation or direction of a court.

Maximum penalty—10 penalty units.

**375 Electoral bribery, treating and selling of votes**

A person must not, in relation to an election under the Act, or an elector at such an election, do any of the things set out in section 209 of the *Electoral Act 2017*.

Maximum penalty—100 penalty units.

### **377 Interference with right to vote**

A person must not, in relation to an election under the Act, or an elector at such an election, do any of the things set out in section 210 of the *Electoral Act 2017*.

Maximum penalty—100 penalty units.

## **Division 11 Miscellaneous**

### **383 Suspension of voting**

- (1) An election manager may temporarily suspend voting for a period not exceeding 4 hours at a polling place on election day if the election manager considers that it is necessary to do so because of—
  - (a) a riot or open violence, or
  - (b) a serious threat of a riot or open violence occurring, or
  - (c) a storm, tempest, flood or other similar event, or
  - (d) a health hazard, or
  - (e) a fire or the activation of a fire alarm or fire safety equipment, or
  - (f) another reason which the election manager considers—
    - (i) may affect the safety of electors, or
    - (ii) may interrupt or obstruct the proper conduct of voting.
- (2) The election manager must ensure that a person who attends the polling place during the period that voting is temporarily suspended is provided with information to assist the person to vote, including—
  - (a) the time at which the polling place is expected to reopen, and
  - (b) the location of other polling places.

### **383A Adjournment of voting**

- (1) This section applies if polling has been suspended under section 383.
- (2) The election manager must adjourn the taking of the poll at the polling place to a later day if—
  - (a) voting cannot be reopened on election day, or
  - (b) the election manager is of the opinion that a person who would have voted at the polling place could not reasonably have voted at another polling place.
- (3) The election manager must specify the day the election is adjourned to.
- (4) The election manager may only adjourn the election to a day that is—
  - (a) as soon as practicable after the election day, but
  - (b) between the day following the election day and the 13th day following the election day.
- (5) The election manager must give public notice of the day the election is adjourned to on the election manager's website.
- (6) The initial scrutiny and count under section 348A at the polling place and the completion of the count under section 351 in the ward or area where the poll has been adjourned are not to proceed until the adjourned poll has been finally closed.
- (7) If the poll has been adjourned at a polling place within a ward, only those electors who are entitled to be enrolled for that ward are entitled to vote at the adjourned poll.

**384 Postponement of last day of voting of postal election**

- (1) If special circumstances exist, the returning officer may postpone the last day of voting of a postal election by fixing a different later day.
- (2) If the returning officer postpones the last day of voting, the returning officer must—
  - (a) immediately give public notice of the new last day of voting, and
  - (b) if postal ballot envelopes have not yet been issued, indicate in the notice the week in which they are likely to be issued.
- (3) For the purposes of subsection (1), special circumstances include—
  - (a) an unforeseen delay in the printing of election materials or in the processing of candidate information sheets, or
  - (b) a postal strike or any disruption to the postal service,  
which would in the opinion of the returning officer necessitate postponing the last day of voting.

**386 Postponed and adjourned elections**

In the case of an election postponed under section 288 of the Act, adjourned under section 383A of this Regulation or a last day of voting is postponed under section 384 of this Regulation—

- (a) ballot-papers already printed may be used for the election, even though they show the original date of the election and not the date to which the election has been postponed or adjourned, and
- (b) the postal ballot-papers issued by the returning officer on or before or after the original date of the election and received by the returning officer up to 6pm on the 13th day following the new date of the election are to be produced by the returning officer at the scrutiny and counting of votes, and
- (c) in the application of this Regulation, the new date of the election is taken to be the election day, and
- (d) the ballot-papers of electors who have voted at a pre-poll voting office or at a declared institution before the original date of the election are to be produced by the returning officer at the scrutiny and counting of votes.

**387 Spoilt ballot-papers at attendance elections**

- (1) If an elector satisfies an election official that he or she has spoilt by reason of accident or mistake the ballot-paper handed to him or her, and that ballot-paper has not been enclosed in an envelope in accordance with Division 7 or 8 of this Part, the election official, on receipt of the spoilt ballot-paper, must—
  - (a) hand or send to the elector a new ballot-paper, and
  - (b) cancel and preserve the spoilt ballot-paper.
- (2) This section does not apply in relation to a postal election.

**388 Assistance to certain electors**

- (1) If an elector is unable to vote without assistance or if the elector is under a religious obligation not to mark a ballot-paper with his or her own hand, a person appointed by the elector may assist the elector.
- (2) The person so appointed must, in the same manner as would be required if he or she were the elector, mark a vote on the ballot-paper (and complete and sign any declaration) according to the instructions of the elector and then fold and return it to an election official.

- (3) However, if (in any form of voting except postal voting) the elector fails to appoint such a person, the polling place manager or pre-poll voting officer (as the case requires) must mark a vote on the ballot-paper (and complete and sign any declaration) according to the instructions of the elector and then fold the ballot-paper.
- (4) The polling place manager or pre-poll voting officer (as the case requires) must do that in the presence of such scrutineers as are present, or, if there are no scrutineers present, either in the presence of another election official or (if the elector so wishes), in the presence of a person appointed by the elector.

### **388A Special format of ballot-papers**

#### **(1) Braille ballot-papers**

The election manager may, on application made to the election manager by an elector, arrange for the elector to be provided with a ballot-paper in braille format—

- (a) at a polling place nominated by the elector in the application, or
- (b) at a pre-poll voting office nominated by the elector in the application, or
- (c) by post if the elector states in the application that he or she intends to vote by a postal vote.

#### **(2) Applications for braille ballot-papers**

An application to the election manager under this section may be made orally to an officer authorised by the election manager to receive such applications or in writing addressed to the election manager. In making an application, the elector must—

- (a) state his or her full name, residential address and date of birth, and
- (b) make a declaration to the effect that he or she is not able to read an ordinary ballot-paper but will be able to understand a ballot-paper in braille format and to vote in accordance with the directions on or accompanying the ballot-paper, and
- (c) state whether he or she intends to vote—
  - (i) on election day—in which case the elector is to nominate the polling place at which the elector intends to vote, or
  - (ii) at a pre-poll voting office—in which case the elector is to nominate the pre-poll voting office at which the elector intends to vote, or
  - (iii) by a postal vote—in which case the application is taken to be an application duly made under section 314 for a postal ballot-paper and postal voting envelope (even if the application was made orally), and
- (d) make the application no later than 6 pm on the closing date for the election.

#### **(3) Manner of making application**

An oral application may be made in person or by telephone or similar technology. If made in writing, the application must be delivered or sent (by post or otherwise), or transmitted by facsimile or email.

#### **(4) Emailed applications**

An application is not validly transmitted by email unless—

- (a) an image of the completed application signed by the elector, or the person making the application on the elector's behalf, is included in or attached to the email, and
- (b) that image includes an image of the actual signature as appearing on the application.



(5) **Inquiries as to authenticity**

The election manager may make such inquiries as the election manager thinks fit to confirm the authenticity of an application if the election manager considers it appropriate to do so in the circumstances. The election manager may decline to act on an application if not satisfied as to its authenticity.

(6) **Voting directions on ballot-paper**

The election manager may include directions on or accompanying the ballot-paper stating how the elector must or may indicate his or her vote.

(7) **Postal voting**

If the elector intends to vote by a postal vote—

- (a) Subdivision 1 of Division 7 has effect subject to this section, and
- (b) the election manager may provide the postal vote certificate in braille format and separate from the postal voting envelope, and
- (c) the signature of the elector on the postal vote certificate must be in writing.

(8) **How ballot-paper dealt with**

Subject to this section, the ballot-paper is to be dealt with as nearly as possible in accordance with the provisions of this Regulation that apply to ordinary ballot-papers, but the election manager may—

- (a) determine that special arrangements apply to ensure that the ballot-paper is appropriately and properly dealt with, and
- (b) for that purpose may determine that those provisions apply with such modifications as the election manager thinks appropriate in the circumstances.

(9) **Ballot-paper not informal because of format**

A ballot-paper is not informal under section 345(1)(c), or under section 4(d) of Schedule 10, just because the braille format of the ballot-paper makes it possible or likely that the elector could be identified.

(10) **Circumstances in which braille ballot-paper not provided**

The election manager is not obliged to arrange for a ballot-paper to be provided in braille format to an elector under this section if satisfied—

- (a) that it is not reasonable in the circumstances to do so, or
- (b) without limiting paragraph (a), that—
  - (i) there is insufficient time to produce the ballot-paper in that format, or
  - (ii) no facilities or insufficient facilities are reasonably available to produce the ballot-paper in that format,in time for it to be provided to the elector.

The election manager is to notify the elector as soon as possible that the ballot-paper will not be provided in braille format.

(11) **Limits on election manager's role**

The election manager is not obliged to provide or arrange the provision of—

- (a) ballot-papers in braille format otherwise than as provided in this section, or
- (b) ballot-papers in any format other than as specified in this or any other section of this Regulation.

(12) **Meaning of braille in this section**

References in this section to braille are references to braille in a form or version determined by the election manager.

**389 Signatures and marks on electoral papers and ballot-papers**

- (1) An electoral paper that is required to be signed by a person is to be signed by that person with his or her personal signature.
- (2) If a person who is unable to sign his or her name in writing makes his or her mark as his or her signature to an electoral paper, the mark is taken to be his or her personal signature, if it is identifiable as such, and is made in the presence of a witness who signs the electoral paper as such witness.
- (3) If a person is unable to mark a ballot-paper or sign and complete an electoral paper without assistance or is under a religious obligation not to mark a ballot-paper or sign and complete an electoral paper with his or her own hand, the person may appoint another person to mark the ballot-paper or sign and complete the electoral paper on that person's behalf.

**391 Security of election materials**

- (1) After the election has been declared, the returning officer must, in the approved manner, package and secure the ballot-papers and other materials used and provided for use at the election.
- (2) The returning officer is to seal, endorse and sign each package, and to allow any scrutineers entitled to be present to do the same to each package. The endorsement is to specify the contents of each package and the name of the ward (if any) and area, as well as the date of the polling, to which the contents relate.
- (3) The returning officer is to forward the packages to the election manager.
- (4) The election manager must ensure the packages are kept securely until the latest of the following—
  - (a) in the case of a council that has resolved to fill any casual vacancy by a countback election—the period of 18 months after the day of polling has expired,
  - (a1) in the case of a council that has not so resolved—the period of 6 months after the day of polling has expired,
  - (b) if proceedings in a court or tribunal relating to the election have been commenced within that period—the proceedings have been finally determined,
  - (c) if the election manager has consented to the use of the papers and materials in the packages for research or analysis—the conclusion of that research or analysis.
- (5) On the expiry of the election manager's obligation under subsection (4), he or she may cause the packages to be destroyed.
- (6) The returning officer is to detach the statistical information sheet from each nomination paper before the papers are packaged under this section. The returning officer is then to forward the sheets to the Secretary.

**391A Provisional voting envelopes**

- (1) This section applies to any envelope used for a provisional vote at an election administered by an electoral services provider.
- (2) The returning officer, after the election has been declared, is to—

- (a) make a copy of the declarations on the envelopes (whether by photographing, photocopying or scanning the declaration), and
  - (b) send the original envelopes to the Electoral Commissioner.
- (3) The Electoral Commissioner may use the information contained in any envelope sent to the Electoral Commissioner under this section, and any envelope in the possession of a returning officer for an election administered by the Electoral Commissioner, for the purposes of updating and maintaining electoral rolls (whether under the Act or any other law).
- (4) The Electoral Commissioner must ensure that any envelopes sent to the Electoral Commissioner under this section are kept securely until the latest of the following—
  - (a) the period of 6 months after the relevant day of polling has expired,
  - (b) if proceedings in a court or tribunal relating to the election concerned have been commenced within that period—the proceedings have been finally determined.
- (5) On the expiry of the Electoral Commissioner's obligation under subsection (4), the Electoral Commissioner may cause the envelopes to be destroyed.

### **393 Election information**

- (1) After an election, the election manager must ensure that—
  - (a) each registered political party that so requests, and
  - (b) each councillor and mayor who is not a member of a registered political party and who makes a request in respect of the councillor's and mayor's ward or area, as appropriate,is provided with election information containing the names and the addresses of electors who voted (other than silent electors), whether they voted personally or by post and, if they voted at a polling place for the ward or area for which the electors were enrolled, the location of that polling place.
- (2) The provisions of section 222(3) and (4) of the *Electoral Act 2017* are adopted in connection with election information provided under subsection (1) as set out in subsections (3) and (4), including the penalty set out at the end of subsection (4).

**Note.** Section 748(3) and (4) of the Act provide for the creation of offences in connection with elections and polls by adopting, with such modifications as are necessary, any of the provisions of the *Electoral Act 2017*, and for the penalty for such an offence not to exceed the penalty for the corresponding offence in that Act.
- (3) Election information provided under subsection (1) must only be used in connection with an election.
- (4) A person must not use, or cause or permit the use of, election information provided under this section for any purpose other than in connection with an election.  
Maximum penalty—1,000 penalty units.

### **393A General manager to report on election**

- (1) This section applies to an election administered by an electoral services provider.
- (2) After an election, the general manager must provide the Minister with a written report setting out details of the election, including (but not limited to) the following information—
  - (a) time spent on the election by the general manager as a proportion of the general manager's remuneration,
  - (b) time spent on the election by council staff as a proportion of council staff remuneration,

- (c) the remuneration of council staff employed specifically for the purpose of the election,
  - (d) the remuneration, recruitment and training costs of election officials,
  - (e) the cost of running any candidate information seminars,
  - (f) the cost of hiring venues and equipment for the election, including council venues and equipment and any associated costs,
  - (g) the cost of any technological support, including the development of any counting software,
  - (h) the cost of preparing a written report under this section,
  - (i) any electoral services provided to electors,
  - (j) any electoral services provided to candidates,
  - (k) operational details of the election,
  - (l) an overall evaluation of the conduct of the election, including feedback from stakeholders,
  - (m) the number of electors entitled to vote at the election and the number of electors who voted, specifying the number of electors who voted personally or by post,
  - (n) the cost to the council of engaging the electoral services provider to administer the election.
- (3) The report must be provided to the Minister and displayed on the council's website within 6 months after the declaration of the election.

**393AA Electoral Commissioner to report on election**

- (1) After each ordinary election of councillors and each first election for an area after its constitution, the Electoral Commissioner must provide the Minister with a written report on the conduct of the election, including (but not limited to) a report on the following—
- (a) the names of the areas whose elections were conducted by the Electoral Commissioner,
  - (b) details of the declared results in those elections,
  - (c) details of any requests for recounts of ballot-papers in those elections,
  - (d) details of any proceedings commenced in a court or tribunal relating to those elections,
  - (e) any recommendations by the Electoral Commissioner to the Minister regarding changes to the Act or this Regulation relating to the conduct of elections.
- (2) The report must be provided to the Minister and displayed on the Electoral Commission's website within 6 months after the election day concerned, unless the Minister is satisfied that special circumstances exist.

**393B Exercise of council functions during caretaker period**

- (1) The following functions of a council must not be exercised by the council, or the general manager or any other delegate of the council (other than a Joint Regional Planning Panel, the Central Sydney Planning Committee or a local planning panel), during a caretaker period—
- (a) entering a contract or undertaking involving the expenditure or receipt by the council of an amount equal to or greater than \$150,000 or 1% of the council's revenue from rates in the preceding financial year (whichever is the larger),

- (b) determining a controversial development application, except where—
  - (i) a failure to make such a determination would give rise to a deemed refusal under the *Environmental Planning and Assessment Act 1979*, section 8.11(1), or
  - (ii) such a deemed refusal arose before the commencement of the caretaker period,
- (c) the appointment or reappointment of a person as the council’s general manager (or the removal of a person from that position), other than—
  - (i) an appointment of a person to act as general manager under section 336(1) of the Act, or
  - (ii) a temporary appointment of a person as general manager under section 351(1) of the Act.

(2) Despite subsection (1), such a function may be exercised in a particular case with the consent of the Minister.

(3) In this section—

***caretaker period*** means the period of 4 weeks preceding the date of an ordinary election.

***controversial development application*** means a development application for designated development for which at least 25 persons have made a submission during community consultation.

***designated development*** means designated development within the meaning of the *Environmental Planning and Assessment Act 1979*, section 4.10.

***local planning panel*** has the same meaning as in the *Environmental Planning and Assessment Act 1979*.

**Note.** See also Division 9A (Provisions relating to activities during regulated periods) of this Part for controls on certain activities during the regulated period before elections.

### **393C Countback elections**

- (1) A countback election referred to in section 291A of the Act is to be carried out in accordance with Schedule 9A.
- (2) For the purpose of section 291A of the Act, the prescribed day is 12 September 2020.
- (3) If a council resolves, at its first meeting following an ordinary election of councillors for the area, that a countback election is to be held to fill any casual vacancy that occurs within 18 months after the date of that ordinary election, the general manager is to notify the election manager of the ordinary election within 7 days of the resolution.

## **Division 12 Mayors, county councils and referendums**

### **394 Election of mayors by councillors**

If a mayor or deputy mayor is to be elected by the councillors of an area, the election is to be in accordance with Schedule 7.

### **395 Election of chairpersons of county councils**

The chairperson of a county council is to be elected in accordance with Schedule 8.

### **396 Election of members of county councils**

Schedule 9 applies in relation to the election of the members of a county council.

**397 Constitutional referendums and council polls**

This Part applies with such modifications as may be necessary, including the modifications in Schedule 10, to the taking of constitutional referendums and council polls for the purposes of Part 3 of Chapter 4 of the Act in the same way as they apply to an election.

## Part 11A Joint organisations

### 397A Application of this Regulation to joint organisations

- (1) Except as provided by this Regulation, this Regulation applies—
  - (a) to a joint organisation in the same way as it applies to a council, and
  - (b) to the representatives on the board of a joint organisation in the same way as it applies to the councillors of councils, and
  - (c) to the executive officer of a joint organisation in the same way as it applies to the general manager of a council.
- (2) In the application of a provision of this Regulation to a joint organisation and to a representative on the board of a joint organisation—
  - (a) a reference to the mayor of a council includes a reference to the chairperson of a joint organisation, and
  - (b) a reference to mayoral office includes a reference to the office of the chairperson of a joint organisation, and
  - (c) a reference to a councillor includes a reference to a voting representative on or a non-voting chairperson of the board of a joint organisation, and
  - (d) a reference to the holding of civic office includes a reference to holding office as a voting representative on or a non-voting chairperson of the board of a joint organisation, and
  - (e) a reference to the general manager of a council includes a reference to the executive officer of a joint organisation, and
  - (f) a reference to the area of a council includes a reference to the joint organisation area of a joint organisation.
- (2A) Part 8A does not apply to a joint organisation.
- (4) Division 11 of Part 13 applies to a joint organisation.
- (5) Unless otherwise expressly provided by this Regulation, nothing in this section applies a provision of this Regulation to a joint organisation if the provision is made under or for the purposes of a provision of the Act that does not apply to a joint organisation.

**Note.** The following provisions of this Regulation apply to a joint organisation—

Part 1 (other than section 4), Parts 6–8, 9 (other than Divisions 7 and 8), 10, 12 and 13 (other than Divisions 2, 3, 4 (other than section 403), 6 and 13) and Schedule 12.

**Note.** Section 400ZH(3) of the Act sets out the provisions of the Act that do not apply to joint organisations, subject to any regulations made under that section. However, a provision of the Act and a provision of this Regulation may apply to a joint organisation if the joint organisation is exercising a function of a council conferred on it by or under the Act (see section 400ZH(4)(a)).

### 397B Charters of joint organisations

- (1) For the purposes of section 400U(5)(a) of the Act, the charter of a joint organisation is to contain the methodology for determining annual financial contributions to the joint organisation by member councils.
- (2) For the purposes of section 400U(5)(b) of the Act, the charter of a joint organisation is to be made publicly available on a website administered by the joint organisation within 30 days of its adoption by the joint organisation.
- (3) A joint organisation must consult with the member councils about the content of a proposed charter of the joint organisation.

**397C Meetings of joint organisations**

- (1) Section 9 of the Act does not apply in respect of the first meeting of a joint organisation.
- (2) For the purposes of the application of section 234 of this Regulation to a joint organisation, the Secretary is to exercise the functions of the Minister under that section.
- (3) For the purposes of section 400ZH(3)(n) of the Act, section 361(2)–(5) of the Act does not apply to or in respect of a joint organisation.
- (4) A joint organisation must consult with the member councils about the content of a proposed code of meeting practice of the joint organisation.

**397D Election of chairperson**

Schedule 7A contains provisions for the election of the chairperson of a joint organisation.

**397E Tied votes**

A motion at a meeting of the board of a joint organisation is taken to be defeated in the event of an equality of votes.

**397F Alternates for voting representatives on board**

- (1) A member council may appoint councillors of the council to be the alternate of any of the mayor, deputy mayor or any other councillor who is a voting representative on the board of the joint organisation.
- (2) A councillor appointed as an alternate may act as the alternate for 2 years, unless another term is specified by the member council or the appointment is revoked by the member council.
- (3) In the absence of a voting representative on the board of a joint organisation, the representative's alternate may, if available, act in the place of the representative.
- (4) While acting in the place of a voting representative on the board, a person has all the functions of a representative and is taken to be a voting representative.

**397G Transaction of business by telephone etc**

- (1) The board of a joint organisation may, if it thinks fit, transact any of its business at a meeting at which representatives (or some representatives) participate by telephone or other electronic means, but only if any representative who speaks on a matter before the meeting can be heard by the other representatives.
- (2) For the purposes of a meeting held in accordance with this section, the chairperson and each other representative on the board have the same voting rights as they have at an ordinary meeting of the board.

**397H Statement of strategic regional priorities**

- (1) A joint organisation must have a statement of strategic regional priorities.
- (2) The statement must set out the strategic regional priorities for the joint organisation area and the strategies and plans for delivering those strategic regional priorities.
- (3) The statement is to be prepared not later than—
  - (a) 6 months after the establishment of the joint organisation, and
  - (b) 12 months after each subsequent ordinary election of councillors for all the member councils.



- (4) A joint organisation must consult with the member councils about the content of a proposed statement of strategic regional priorities.
- (5) The statement of strategic regional priorities is to be published by the joint organisation on a website maintained by the organisation.
- (6) For the purposes of section 400ZH(4)(b) of the Act, section 406 of the Act applies to a joint organisation as if a reference in that section to a community strategic plan were a reference to a statement of strategic regional priorities required to be prepared by the organisation under this section.

#### **397I Annual statement of revenue policy**

- (1) A joint organisation must have a statement of the joint organisation's revenue policy for a year.
- (2) The statement of the revenue policy must include the following statements—
  - (a) a statement containing a detailed estimate of the joint organisation's income and expenditure,
  - (b) a statement of the types of fees proposed to be charged by the joint organisation,
  - (c) the amount of any proposed fees to which Division 3 of Part 10 of Chapter 15 of the Act applies,
  - (d) a statement of the amounts of any proposed borrowings (other than internal borrowing), the sources from which they are proposed to be borrowed and the means by which they are proposed to be secured.
- (3) The statement of fees need not include information that could confer a commercial advantage on a competitor of the joint organisation.
- (4) For the purposes of section 400ZH(4)(b) of the Act, section 406 of the Act applies to a joint organisation as if a reference in those subsections to an operational plan were a reference to the joint organisation's revenue policy statement.
- (5) A joint organisation must adopt its revenue policy statement for a year on or before 30 June in the preceding year. If the joint organisation is established on or after 1 March in the preceding year, the date for the adoption of the statement is extended to 31 August in the next year.
- (6) A joint organisation is not required to prepare an annual revenue statement for the first year in which it is established.
- (7) For the purposes of the application of section 610F of the Act to a joint organisation, a reference to an operational plan of a council is taken to be a reference to an annual revenue statement of a joint organisation.

#### **397J Annual performance statements**

- (1) Within 5 months from the end of each year, a joint organisation must prepare a report (its *annual performance statement*) for that year reporting as to its progress in implementing its strategies and plans for delivering its strategic regional priorities.
- (2) The annual performance statement is to be published by the joint organisation on a website maintained by the organisation within 28 days after it is made.
- (3) Section 217 (other than section 217(1)(a1)(iiiia) and (iv), (a4), (e), (e1) or (f)) applies to an annual performance statement of a joint organisation in the same way as it applies to an annual report of a council.
- (4) A joint organisation is not required to, but may, prepare an annual performance statement for the first year in which it is established.

- (5) For the purposes of section 400ZH(4)(b) of the Act, section 406 of the Act applies to a joint organisation as if a reference in that section to an annual report were a reference to an annual performance statement required to be prepared by the organisation under this section.

**397K Delegation of functions**

- (1) For the purposes of section 400ZE(1) of the Act, the following functions must not be delegated by a joint organisation—
- (a) the appointment of an executive officer,
  - (b) the fixing of a fee,
  - (c) the borrowing of money,
  - (d) the voting of money for expenditure on its works, services or operations,
  - (e) the purchase, sale, exchange or surrender of any land or other property (but not including the sale of items of plant or equipment),
  - (f) the acceptance of tenders to provide services currently provided by members of staff of the joint organisation,
  - (g) the fixing of an amount for the carrying out by the joint organisation of work on private land,
  - (h) the power of the joint organisation to authorise the use of reasonable force for the purpose of gaining entry to premises under section 194 of the Act,
  - (i) a decision under section 356 of the Act to contribute money or otherwise grant financial assistance to persons,
  - (j) the making of an application, or the giving of a notice, to the Governor or Minister,
  - (k) any function under this or any other Act that is expressly required to be exercised by resolution of the joint organisation,
  - (l) the power of delegation conferred by section 400ZE(1) of the Act,
  - (m) any function under section 397H, 397I or 397J of this Regulation.
- (2) Despite subsection (1), a joint organisation may delegate its functions relating to the granting of financial assistance if—
- (a) the financial assistance is part of a specified program, and
  - (b) the program applies uniformly to all persons within the joint organisation area or to a significant proportion of all the persons within that area.

**397L Financial contributions by member councils**

- (1) For the purposes of section 400ZF of the Act, each member council of the joint organisation is to make an annual financial contribution to the joint organisation.
- (2) The joint organisation is to determine the amount of the annual contribution in accordance with the methodology adopted by the board in the charter.
- (3) The joint organisation may from time to time determine that additional financial contributions are to be made by any or all of the member councils.
- (4) A financial contribution of a member council under this section may be in the form of a monetary payment or in any other form agreed by the joint organisation with the member council.
- (5) A joint organisation must consult with the member councils about proposed financial contributions.

**397M Payment of expenses and provision of facilities**

- (1) For the purposes of section 400ZH(4)(b) of the Act, section 252 of the Act (other than section 252(2)) is not an excluded provision of the Act in relation to all joint organisations.
- (2) A joint organisation must consult with the member councils about the content of a proposed policy concerning the payment of expenses.

**397N First financial reports and other financial matters**

- (1) This section applies to a joint organisation if it is established after 1 July in a year.
- (2) The first financial reports required to be prepared under Part 3 of Chapter 13 of the Act for a joint organisation are to be prepared for the period commencing on the constitution of the joint organisation and ending on the last day of the year after the year in which the joint organisation is established.
- (3) For the purposes of section 400ZH(5)(a) of the Act, section 413(1) of the Act applies to a joint organisation with the modifications set out in subsection (2).
- (4) For the purposes of section 400ZH(5)(b) of the Act, the following provisions of the Act do not apply to or in respect of a joint organisation—
  - (a) Division 2 of Part 10 of Chapter 15,
  - (b) Division 5 of Part 2 of Chapter 17.

**397O Application of merit appointment provisions**

- (1) Sections 348(1) and (2) and 349 of the Act do not apply to the appointment of a person as the first executive officer of a joint organisation, if the term of appointment is for a period of not more than 12 months.
- (2) However, a joint organisation may comply with any of those provisions if it thinks fit.

**397P Transfer of staff**

- (1) Section 406A applies to the following changes of employment—
  - (a) a change of employment from a joint organisation to another joint organisation,
  - (b) a change of employment from a joint organisation to a council,
  - (c) a change of employment from a council to a joint organisation.

**Note.** Because of section 4, this section, and Division 5 of Part 13 of this Regulation, apply to a county council in the same way as they apply to a council.
- (2) Sections 406C and 406D apply to staff members of a joint organisation, with the following modifications—
  - (a) a staff transfer is taken to include a transfer of staff under a proclamation under Chapter 12 of the Act,
  - (b) a reference to a proclamation under Chapter 9 of the Act is taken to include a reference to a proclamation under Chapter 12 of the Act.
- (3) For the purposes of section 400ZH(5)(a) of the Act—
  - (a) section 354D of the Act applies to staff transfers in connection with the transfer of functions to or from a joint organisation and a council or a county council in the same way as it applies to a staff transfer within the meaning of Part 6 of Chapter 11 of the Act, and
  - (b) section 354G of the Act applies to staff transfers in connection with the transfer of functions to or from a joint organisation and a council or a county

council in the same way as it applies to transfers in connection with the constitution of a new area.

**397Q Acquisition of land excluded**

For the purposes of section 400ZH(5)(b) of the Act, Part 1 of Chapter 8 of the Act does not apply to or in respect of a joint organisation.

## Part 12 Penalty notices

### 398 Offences in respect of which penalty notices may be served

For the purposes of section 679(1) of the Act, an offence specified in Column 1 of Schedule 12 is a prescribed offence.

**Note.** Penalty notices may also be served under other sections of the Act as well as under section 679. See sections 312 and 314 (and section 357 of this Regulation) concerning failure to vote in council elections, sections 642 and 647 concerning the drinking of alcohol in alcohol-free zones and sections 632, 650 and 651 of the Act (and Schedule 5 to the *Road Transport (General) Regulation 2021*) concerning parking offences.

### 399 Penalties for offences

For the purposes of section 679(2) of the Act, the amount shown in Column 2 of Schedule 12 opposite an offence specified in Column 1 of that Schedule is the amount of penalty prescribed for the offence if dealt with under section 679.

## Part 13 Miscellaneous

### Division 1 Council seal

#### 400 Council seal

- (1) The seal of a council must be kept by the mayor or the general manager, as the council determines.
- (2) The seal of a council may be affixed to a document only in the presence of—
  - (a) the mayor and the general manager, or
  - (b) at least one councillor (other than the mayor) and the general manager, or
  - (c) the mayor and at least one other councillor, or
  - (d) at least 2 councillors other than the mayor.
- (3) The affixing of a council seal to a document has no effect unless the persons who were present when the seal was affixed (being persons referred to in subsection (2)) attest by their signatures that the seal was affixed in their presence.
- (4) The seal of a council must not be affixed to a document unless the document relates to the business of the council and the council has resolved (by resolution specifically referring to the document) that the seal be so affixed.
- (5) For the purposes of subsection (4), a document in the nature of a reference or certificate of service for an employee of the council does not relate to the business of the council.

### Division 2 Compulsory acquisition of land for resale (the Act, section 188)

#### 401 Meaning of “diligent inquiry”

- (1) For the purposes of section 188(2)(b) of the Act, a *diligent inquiry* for the owner of land that a council intends to acquire by compulsory process for the purpose of resale is the taking of all the actions named and described in this section.
- (2) **Searching of registers**, being the searching of—
  - (a) the Register kept under the *Real Property Act 1900*, and
  - (b) the General Register of Deeds kept under the *Conveyancing Act 1919*, and
  - (c) the National Native Title Register kept under the *Native Title Act 1993* of the Commonwealth,to identify every person who has a legal or equitable estate or interest in the land, or an easement, right, charge, power or privilege over, or in connection with, the land.
- (3) **Fixing a notice to the land**, being the placing, on a board or other structure in a conspicuous place on the land, of a notice—
  - (a) stating that the council intends to acquire the land specified in the notice by compulsory process for the purpose of resale, and
  - (b) inviting the owner of the land to contact the council at an address specified in the notice.
- (4) **Publishing a notice**, being the publishing, in a newspaper circulating in the area in which the land is situated and in a newspaper circulating generally in New South Wales, of a notice referred to in subsection (3).
- (5) **Giving notice to representatives of persons who may hold native title**, being the giving of notice in the following ways—

- (a) the giving, to the New South Wales Aboriginal Land Council and to the relevant Local Aboriginal Land Council, of a notice—
    - (i) stating that the council intends to acquire the land specified in the notice by compulsory process for the purpose of resale, and
    - (ii) inviting any person who considers that he or she may hold native title to the land to contact the council at an address specified in the notice,
  - (b) if a relevant procedure under the *Native Title Act 1993* of the Commonwealth applies—the giving of notice as required under that procedure,
  - (c) if a relevant procedure under that Act does not apply—the giving of notice (as set out in paragraph (a)) to any registered native title claimant (within the meaning of that Act) in relation to the land concerned by post or in such other manner to which the notified claimant agrees.
- (6) For the purposes of subsection (5), a **relevant procedure** is the procedure under Subdivision P of Division 3 of Part 2 of the *Native Title Act 1993* of the Commonwealth or the procedure under section 24MD(6B) of that Act, or the procedure prescribed by a registered indigenous land use agreement.
- (7) Despite subsection (1), if an action referred to in subsection (5)(b) or (c) is substantially the same as an action referred to in subsection (3), (4) or (5)(a), the action concerned need be taken only once.

### **Division 3      Surveys and polls relating to council amalgamations or boundary changes (the Act, section 218F)**

#### **402    List of electors**

- (1) For the purposes of a postal survey or opinion poll under section 218F(3) of the Act, the Boundaries Commission or Secretary, as the case requires, is to prepare a list of electors of an area concerned, being a list of—
- (a) resident electors, namely, the persons whose names are contained in the roll, as at a date determined by the Boundaries Commission or Secretary, required to be kept under section 298 of the Act as the residential roll in respect of the area, and
  - (b) other eligible electors, being—
    - (i) the persons whose names are contained in the rolls confirmed under sections 299 (non-residential owner roll) and 300 (roll of occupiers and ratepaying lessees) for the last election held for the area, or
    - (ii) if such rolls are not current (in the opinion of the Boundaries Commission or Secretary), the persons who, on a date determined by the Boundaries Commission or Secretary, are non-resident owners, occupiers or ratepaying lessees of rateable land in the area, and who have indicated in a manner approved by the Boundaries Commission or Secretary their desire to be included in the list prepared for the area under this section.
- (2) The persons whose names are contained in a list prepared under this section are the electors of the area concerned for the purposes only of the postal survey or opinion poll in respect of which the list is prepared.

### **Division 4      Payments to councillors (the Act, sections 252 and 254A)**

#### **403    Payment of expenses and provision of facilities**

- (1) A policy under section 252 of the Act must not include any provision enabling a council—

- (a) to pay any councillor an allowance in the nature of a general expense allowance, or
  - (b) to make a motor vehicle owned or leased by the council available for the exclusive or primary use or disposition of a particular councillor other than a mayor.
- (2) A policy under the Act, section 252 must provide for the making of payment of expenses associated with carer responsibilities that are adequate or reasonable.

**404 Circumstances in which councillors' annual fees may be reduced or not paid**

For the purposes of section 254A of the Act, a prescribed circumstance for the non-payment or reduction of a councillor's annual fee is the circumstance where both of the following conditions are satisfied—

- (a) the payment of the annual fee adversely affects the councillor's entitlement to a pension, benefit or allowance under any legislation of the Commonwealth, a Territory or a State (including New South Wales),
- (b) the councillor agrees to the non-payment or reduction.

**Division 5 Council staffing matters**

**405 Exemption from Ministerial approval for certain termination payments to senior staff**

- (1) The following kinds of payments to a senior staff member are exempted from section 354A of the Act—
- (a) a termination payment that does not exceed the value of the senior staff member's total remuneration package over the 12 months preceding his or her termination of employment,
  - (b) a payment to which the senior staff member is entitled, on termination of employment, under any Act,
  - (c) a payment for untaken long service leave or untaken sick leave that does not exceed an amount to which a member of staff of a council, other than a senior staff member, would be entitled under any Act or award (within the meaning of section 27 of the *Industrial Relations Act 1996*).
- (2) For the purposes of subsection (1)(a), a senior staff member's total remuneration package includes the matters set out in section 332(3)(a)–(d) of the Act.

**406 Determinations relating to staff entitlements during proposal period not requiring Ministerial approval**

A determination to which section 354E of the Act applies is not required to be approved by the Minister if it complies with any of the following requirements—

- (a) it is a determination that is authorised by an industrial instrument, or employment policy of the former council, made or approved before the proposal period,
- (b) it is a determination in, or authorised by, an award, enterprise agreement or other industrial instrument made or approved by the Industrial Relations Commission or Australian Industrial Relations Commission,
- (c) it is a determination that comprises the renewal of an employment contract entered into before the proposal period.

**406A Transfer of accrued leave entitlements**

- (1) In this section—



**award** means the *Local Government (State) Award 2004* as in force immediately before 27 March 2006.

**employee** does not include a member of the senior staff of a council.

- (2) The provisions of the award relating to the transfer of an employee's accrued sick leave and long service leave entitlements when changing employment from one council to another (***the relevant award provisions***) apply, by force of this section, in relation to an employee of a council who changes employment, in the circumstances referred to in the relevant award provisions, from one council to another.
- (3) Without limiting subsection (2), the relevant award provisions that apply by force of this section include—
  - (a) the liability of the council by which the employee concerned was last employed to pay the council by which the employee is currently employed the cost of the employee's accrued long service leave entitlement, and
  - (b) the right of the employee concerned to elect to be paid the monetary value of the employee's accrued long service leave entitlement.
- (4) This section applies to an employee of a council whether or not the employee was a person to whom the award applied.
- (5) Nothing in this section affects any leave entitlement of a member of the senior staff of a council under the member's employment contract.
- (6) Nothing in this section affects any entitlement of an employee of a council conferred by or under Part 6 of Chapter 11 of the Act.

**Note.** Clause 19, Part A of the award includes the following—

- (v) Accumulated sick leave shall be transferable on change of employment from council to council within New South Wales up to 13 weeks, provided that an employee shall only be entitled to transfer sick leave accumulated since the employee's last anniversary date on a pro-rata basis. Such accumulated sick leave shall only be transferable if the period of cessation of service with the council and appointment to the service of another council does not exceed three months. The sick leave entitlement transferred shall not exceed the maximum amount transferable as prescribed by the appropriate award at the time of transfer.

Clause 19, Part D of the award includes the following—

- (iii)
  - (a) For the purpose of calculating long service leave entitlement in accordance with subclause (i) of this clause all prior continuous service with any other council within New South Wales shall be deemed to be service with the council by which the employee is currently employed.
  - (b) Continuity of service shall be deemed not to have been broken by transfer or change of employment from one council to another provided the period between cessation of service with one council and appointment to the service of another council does not exceed three months and such period is covered by accrued annual and long service leave standing to the credit of the employee at the time of the transfer, provided further that the employee concerned does not engage in work of any kind during the period of paid leave between the cessation of service with one council and appointment to the service of another council.
- (iv) For the purpose of this clause, service shall include the following periods:-
  - (a) Any period of service with any of Her Majesty's Forces provided that the employee enlisted or was called up direct from the service of a council.
  - (b) In the case of an employee, transferred to the service of a council of a new or altered area - any period of service with the council from which such employee was transferred.

- (c) Service shall mean all service with a council irrespective of the classification under which the employee was employed.
- (v) There shall be deducted in the calculation of the employee's service all leave of absence without payment not specifically acknowledged and accepted by council as service at the time leave was taken.
- (vi) When an employee transfers from one council to another, the former council shall pay to the newly employing council the monetary equivalent of all long service leave accruing to the employee at the time of transfer. However, an employee who at the time of transfer has completed at least five years continuous service may elect to be paid the monetary equivalent of the entitlement. Employees who at the time of transfer elect to be paid the monetary equivalent of their long service leave entitlement shall have that entitlement calculated by multiplying in completed years and months their period of continuous service with council(s). A statement showing all prior continuous service with the council(s) of the employee concerned shall be furnished together with details of the assessment of the amount of money that shall be paid into a Long Service Leave Reserve Account and appropriate notations made in the council's Long Service Leave Record.
- (vii) A council which has received under subclause (vi) of this clause a monetary equivalent of long service leave entitlement to cover an employee's period of service with a previously employing council(s) shall if the employee subsequently leaves the service of that employing council to seek employment outside New South Wales Local Government before a long service leave entitlement has become due, refund to such previously employing council(s) the amount paid.

Clause 38 of the award includes the following—

- (v) Where an employee prior to 11 May 1995, had an entitlement to transfer accumulated sick leave from one council to another council in New South Wales, under the Local Government Senior Officers' Award the employee shall retain this entitlement.

#### **406B Long service leave entitlements**

An employee of a council who is entitled to any period of long service leave on ordinary pay may, with the consent of the council, take that entitlement—

- (a) as leave for twice that period on half pay, or
- (b) as leave for half that period on double pay.

#### **406C Entitlements of senior staff on transfer following amalgamation or boundary alteration**

- (1) This section applies to senior staff members of a council.
- (2) If a staff transfer occurs, the employment of a transferred staff member continues on the same terms and conditions that applied to the staff member immediately before the transfer day.
- (3) Subsection (2) applies until other provision is duly made under any Act or law.
- (4) Neither the contract of employment nor the period of employment of a transferred staff member is taken to have been broken by the transfer for the purposes of any law or contract relating to the employment of the staff member.
- (5) A transferred staff member is not entitled to receive any payment or other benefit merely because the staff member ceases to be a staff member of the former council.
- (6) The transfer of a transferred staff member does not affect any accrued rights the staff member had immediately before the transfer, including in relation to recreation leave, sick leave, long service leave and superannuation, but does not entitle the staff member to claim dual benefits of the same kind for the same period of service.

- (7) If a staff member of a former council who was a staff member of that council immediately before the former council ceases to exist—
  - (a) is not transferred to any other council by or under the operation of a proclamation under Chapter 9 of the Act, or
  - (b) is transferred, but ceases to be a staff member of the new council as a consequence of the amalgamation before the first election for the new council, the termination of the staff member’s employment with the former council or the new council is taken to be a redundancy.
- (8) A contract of employment of a staff member has no effect to the extent to which it is inconsistent with this section.
- (9) This section is subject to the provisions of any applicable proclamation under Chapter 9 of the Act.
- (10) Words and expressions used in this section have the same meaning as in Part 6 of Chapter 11 of the Act.

**406D Entitlements of senior staff not transferred on boundary alterations**

- (1) This section applies to senior staff members of a council.
- (2) If a staff transfer occurs as a consequence of a boundary alteration, the employment of a remaining staff member of the transferor council and an existing staff member of the transferee council continues on the same terms and conditions that applied to the staff member immediately before the transfer day.
- (3) Subsection (2) applies until other provision is duly made under any Act or law.
- (4) A contract of employment of a staff member has no effect to the extent to which it is inconsistent with this section.
- (5) This section is subject to the provisions of any applicable proclamation under Chapter 9 of the Act.
- (6) Words and expressions used in this section have the same meaning as in Part 6 of Chapter 11 of the Act.

**Division 6 Winding up of Cudgegong (Abattoir) County Council (the Act, section 400AA)**

**407 Modification of Parts 5.5–5.9 of the Corporations Act 2001 of the Commonwealth concerning winding up of Cudgegong (Abattoir) County Council**

For the purposes of clause 1(2)(g) of Schedule 9 to the Act, the following modifications of Parts 5.5–5.9 of the *Corporations Act 2001* of the Commonwealth are prescribed—

- (a) the definition of *recovery proceeding* in section 588E(1) is to be read as if paragraphs (e) and (f) were omitted,
- (b) section 588E(8) is to be read as if paragraphs (d) and (e) were omitted,
- (c) section 588FF is to be read as if “(but not a director)” were inserted after “a person” wherever occurring in section 588FF(1)(a), (b), (c) and (d),
- (d) Part 5.7B is to be read as if sections 588FGA and 588FGB were omitted,
- (e) Part 5.7B is to be read as if Divisions 3–7 were omitted,
- (f) section 590 is to be read as if “within 10 years next before the relevant day or at a time on or after that day” wherever occurring in section 590(1)(c), (g) and (h) and (2) were omitted and “at any time on or after the relevant day” were inserted instead,

- (g) section 596A is to be read as if “, to the extent that they relate to its winding up,” were inserted after “affairs”,
- (h) section 596B(1) is to be read as if “, to the extent that they relate to its winding up,” were inserted after “affairs” where firstly occurring,
- (i) section 596B(1)(b)(i) is to be read as if “, to the extent that they relate to its winding up,” were inserted after “affairs of the corporation”,
- (j) section 596B(1)(b)(ii) is to be read as if “, to the extent that they relate to its winding up” were inserted after “affairs of the corporation”,
- (k) section 596D is to be read as if “, to the extent that they relate to its winding up” were inserted after “affairs” wherever occurring in section 596D(1)(b) and (2)(b),
- (l) section 597(5B) is to be read as if “, to the extent that they relate to its winding up,” were inserted after “corporation”,
- (m) section 597A is to be read as if “(winding up)” were inserted after “affairs” in the heading,
- (n) section 598(2)(a) is to be read as if “the winding up of” were inserted after “in relation to”.

## **Division 7 Certain exclusions**

### **408 Arrangements excluded from provisions relating to public-private partnerships**

- (1) For the purposes of section 400B(1) of the Act, the following arrangements are excluded from the operation of Part 6 of Chapter 12 of the Act—
  - (a) any contract between a council and a private person that would, but for a resolution by the council to enter into a public-private partnership, be subject to the tendering requirements under section 55 of the Act,
  - (b) any arrangement arising out of the operation of Division 7.1 of the *Environmental Planning and Assessment Act 1979*,
  - (c) any arrangement arising out of the imposition by a council of a requirement under section 306 of the *Water Management Act 2000* (as applying to the council by virtue of section 64 of the Act).
- (2) In this section, *private person* has the same meaning as in section 400B(2) of the Act.

### **410 Entities excluded from restrictions under section 358 of the Act as to formation**

- (1) For the purposes of section 358(4) of the Act, an entity formed under any of the following arrangements is excluded from the definition of *entity* under that section—
  - (a) an arrangement between a council and a private person that is subject to the tendering requirements under section 55 of the Act,
  - (b) the contracting out of any council staff or business unit to provide services for a private person on a full cost recovery or for profit basis,
  - (c) any arrangement under which a council acts as trustee in connection with a bequest or donation of any property from a private person,
  - (d) the sale by a council to a private person of any property (including operational land),
  - (e) any arrangement arising out of the operation of Division 7.1 of the *Environmental Planning and Assessment Act 1979*,
  - (f) any arrangement arising out of the imposition by a council of a requirement under section 306 of the *Water Management Act 2000* (as applying to the council by virtue of section 64 of the Act).

- (2) In this section, *private person* has the same meaning as in section 400B(2) of the Act.

## **Division 8 Bathing control notices (the Act, section 633)**

### **411 Bathing control notices**

- (1) Notices that are used by a council to control bathing must comply with the requirements of AS 2416.
- (2) A council that uses flags to designate an area for bathing must ensure that the flags are removed from the area whenever the area is closed for bathing.
- (3) In this section—  
*AS 2416* means the Australian Standard entitled *Design and application of water safety signs* and numbered AS 2416—2002, as published by Standards Australia on 7 February 2002.  
*bathing* includes surfing and any other similar form of recreation.

## **Division 9 Disclosure and misuse of information**

### **412 Prescribed circumstances**

For the purposes of section 664(1B)(c) of the Act, any disclosure made with the intention of enabling the Minister or the Secretary to properly exercise the functions conferred or imposed on them by or under the Act is a prescribed circumstance.

## **Division 10 Application of certain penalties**

### **413 Parking and related offences for purposes of the Act, section 694**

Any offence for which a penalty notice may for the time being be served under section 195 of the *Road Transport Act 2021* by a Class 12 officer referred to in Schedule 4 to the *Road Transport (General) Regulation 2021* is declared to be a parking or related offence for the purposes of section 694 of the Act.

**Note.** The *Road Transport (General) Regulation 2021* defines the expression **Class 12 officer** and lists the offences for which a penalty notice may be served by such an officer. By operation of this section, any offence in that list is a parking or related offence for the purposes of section 694 of the Act.

## **Division 11 Functions of general manager**

### **413A Functions of general manager (the Act, section 335)**

If a court or tribunal orders a council to pay any fine or other penalty, or to pay costs in relation to any legal proceedings, it is the duty of the council's general manager to ensure that the following information is made available to each councillor as soon as practicable after the order is made—

- (a) the date on which the order was made,
- (b) the amount of the fine, penalty or costs,
- (c) the act or omission giving rise to the fine or penalty, or the nature of the legal proceedings giving rise to the costs, as the case may be.

## **Division 13 Standards of coastal protection services**

### **413C Standards of coastal protection services**

- (1) A coastal protection service carried out by a council to maintain coastal protection works must maintain the structural integrity of the works to a reasonable engineering standard.
- (2) A coastal protection service carried out by a council to manage the impacts of coastal protection works must ensure that the works do not result in any significant change in the long term position of the coastline.

## **Division 14 Performance management criteria and suspension criteria**

### **413D Performance improvement criteria: the Act, section 438B**

The following are criteria to be considered by the Minister before issuing a performance improvement order—

- (a) whether the council concerned has failed to comply with its legislative responsibilities, standards or guidelines,
- (b) whether there are significant risks facing the council that are not being addressed,
- (c) whether previous intervention attempts have failed,
- (d) whether council business is being disrupted and the council failing to exercise its functions,
- (f) whether there is a pattern of poor or inappropriate behaviour, either by one or more councillors or members of staff of the council, that has not been rectified,
- (g) any other matter that, in the opinion of the Minister, is relevant to the issuing of the order.

### **413DA Temporary adviser criteria: the Act, section 438G**

In deciding whether to appoint a temporary adviser to a council, the Minister is to consider whether the appointment will, in the opinion of the Minister, assist the council to comply with, or implement actions under, the performance improvement order issued in respect of the council.

### **413DB Financial controller criteria: the Act, section 438HB**

The following are criteria to be considered by the Minister in deciding whether to appoint a financial controller to a council—

- (a) whether the appointment of a financial controller will, in the opinion of the Minister, contribute to improving the financial operations of the council,
- (b) whether the appointment of a financial controller will, in the opinion of the Minister, contribute to mitigating any financial risk to the operations of the council.

### **413E Suspension criteria: the Act, section 438J**

The following are criteria to be considered by the Minister before temporarily suspending a council—

- (a) whether the council has failed to comply with its legislative responsibilities, standards or guidelines,
- (b) whether there are significant risks facing the council that are not being addressed,
- (c) whether previous intervention attempts have failed,

- (d) whether council business is being disrupted and the council failing to exercise its functions,
- (e) whether the appointment of an interim administrator is necessary, in the opinion of the Minister, to restore the proper or effective functioning of the council,
- (f) whether there is a pattern of poor or inappropriate behaviour by one or more councillors that has not been rectified,
- (g) whether an ordinary election of councillors occurs within 3 months after the making of the order,
- (h) any other matter that, in the opinion of the Minister, is relevant to the suspension of the council.

## **Part 14 Savings and repeal**

### **414 Savings**

Any act, matter or thing that, immediately before the repeal of the *Local Government (General) Regulation 2005*, had effect under that Regulation continues to have effect under this Regulation.

### **415 Repeal**

This Regulation is repealed on 1 September 2022.



## Schedule 1 Standards relating to approvals

(Sections 13 and 16)

### Part 2 Standards for water supply, sewerage and stormwater drainage work

#### 15 Compliance with Acts and Codes

- (1) Water supply work or sewerage work that is plumbing and drainage work within the meaning of the *Plumbing and Drainage Act 2011* must comply with that Act and the regulations under that Act.
- (2) Any water supply work or sewerage work that is not plumbing and drainage work under that Act, and any stormwater drainage work, must comply with the Plumbing Code of Australia.

#### 16 Premises to be connected to water supply by an independent house service pipe

- (1) Unless the council authorises otherwise, premises must not be connected to a property service pipe linked to the council's water supply system except by an independent house service pipe.
- (2) An independent house service pipe connecting premises to the council's water supply system must have a stop-valve within the premises—
  - (a) at a place that is not more than 450 millimetres from the road alignment, or
  - (b) at some other place approved by the council.
- (3) An independent house service pipe must be laid to each allotment of land that is separately occupied, unless alternative arrangements have been made with the council.
- (4) If the council authorises the connection of 2 or more premises by means of a single house service pipe, there must (unless all the premises are occupied by one household or firm as a residence or place of business) be installed on each of those premises—
  - (a) a separate stop-valve that complies with subsection (2), and
  - (b) a separate water meter to measure the water supply to those premises.

#### 17 Chemical dispensing units not to be connected to water supply system

- (1) A connection must not be made between the council's water supply system, or a pipe or fitting supplied with water from that system, and any device or fitting designed to be used to dispense a chemical compound capable of contaminating the water supply, unless the device or fitting is of a type approved by the Secretary or complies with AS 5200.000—2006.
- (2) The council's water supply system, or a pipe or fitting supplied with water from that system, must not be directly connected to a device or fitting designed to be used to dispense a chemical compound capable of contaminating the water supply, unless that device or fitting is of a type approved for such connection by the Secretary or complies with AS 5200.000—2006.

#### 18 Water meters

- (1) Water supply services must be provided through a water meter unless alternative arrangements have been approved by the council.
- (2) A water meter (other than a water meter hired from or provided by the council) to be installed on premises connected or to be connected to a water supply system must—

- (a) be of a size and class approved by the council, and
  - (b) be fitted with stop-valves and such other fittings as may be specified by the council.
- (3) A water meter through which water supply services are provided to premises must be accessible to the council at any time.
- (4) If required by the council—
  - (a) such a water meter must be protected by being enclosed in a box constructed of metal, wood or other strong durable material, and
  - (b) such a box must be fitted with a lock and key of a type approved by the council.

**19 Joint sewerage services prohibited**

- (1) Any house drain on premises connected to a council's sewerage system must be kept separate from that of all other premises.
- (2) The only fittings and fixtures permitted to discharge into such a house drain are those located on the premises.
- (3) A house drain on premises that are to be connected to a council's sewerage system must be laid within the boundary of the premises until it—
  - (a) reaches that system or the boundary nearest that system, or
  - (b) emerges into a public place.

**21 Materials for use in water supply, sewerage or stormwater drainage work**

- (1) Materials used in carrying out water supply, sewerage or stormwater drainage work referred to in item 1, 4 or 5 of Part B of the Table to section 68 of the Act must be of a kind authorised for the purposes of the work—
  - (a) by the Secretary, or
  - (b) under AS 5200.000—2006.
- (2) If an inconsistency arises under subsection (1), the authorisation of the Secretary prevails.
- (3) This section does not apply to water supply work or sewerage work that is plumbing and drainage work within the meaning of the *Plumbing and Drainage Act 2011*.

## Schedule 2 Standards enforceable by orders

(Sections 83–86, 92 and 94)

### Part 1 Standards for places of shared accommodation

#### 1 Maximum number of boarders and lodgers

- (1) The number of occupants (not including children under the age of 5 years) must not exceed the maximum number of persons determined by the council to be accommodated in each bedroom or dormitory and in the whole premises.
- (2) The maximum number of persons accommodated in a bedroom, or in a cubicle of a dormitory, must not exceed the number determined by allowing a minimum floor area within the bedroom or cubicle in accordance with the relevant provisions under the *Public Health Act 2010* for each person.

**Note.** On the commencement of this Regulation, the relevant provision was clause 46 of the *Public Health Regulation 2012*.

#### 2 Notices

- (1) A sign indicating the permissible maximum length of time during which a person may board or lodge in the premises must be conspicuously displayed to public view outside the premises.
- (2) A schedule showing the numeral designating each bedroom and dormitory and the number of persons permitted to be accommodated in each must be conspicuously displayed on the premises.
- (3) Each bedroom must be numbered in accordance with the schedule and there must be displayed clearly on the door of or in each bedroom the maximum number of persons allowed to be accommodated in the bedroom.

#### 3 Light and ventilation

- (1) Adequate light and ventilation must be maintained in the premises.
- (2) All partitions forming cubicles in a dormitory must be adequately constructed and provide adequate ventilation.

#### 4 Kitchen facilities

- (1) Any kitchen facilities and utensils for the storage or preparation of food must be kept in a clean and healthy condition, in good repair, free from foul odours and, as far as practicable, free from dust, flies, insects and vermin.
- (2) The floor of any kitchen must have an approved impervious surface.

#### 5 General cleanliness

- (1) All parts of the premises and all appurtenances (including furniture, fittings, bedsteads, beds and bed linen) must be kept in a clean and healthy condition, and free from vermin.
- (2) Pans, receptacles or other waste storage devices must be kept covered and all waste must be deposited in appropriate pans, receptacles or other waste storage devices.

#### 6 Furniture and fittings

Appropriate furniture and fittings must be provided and maintained in good repair.

## **7 Long term residences**

If the place is one in which persons may board or lodge for 7 days or longer, an adequate number of beds (each provided with a mattress and pillow and an adequate supply of clean blankets or equivalent bed clothing), adequate storage space and blinds, curtains or similar devices to screen bedroom and dormitory windows for privacy must be provided for the occupants.

## **Part 2 Standards for hairdressers shops**

### **8 Structural requirements**

- (1) The premises must be structurally suitable for the carrying out of hairdressing.
- (2) Without limiting the generality of subsection (1), premises are structurally unsuitable for the carrying out of hairdressing if any wash basin is situated against any wall and that wall (from floor level to a height of 450 millimetres above the top of the wash basin and from the centre of the wash basin to a distance of 150 millimetres beyond each side of the wash basin) is not constructed of, or covered with, material that is durable, smooth, impervious to moisture and capable of being easily cleaned.

### **9 Hygiene**

- (1) The premises must be clean and in good repair.
- (2) The premises must be provided with facilities that are adequate for the purpose of keeping hairdressing appliances and utensils clean.

### **10 Hairdressing facilities**

- (1) The premises must be provided with washing, drainage, ventilation and lighting facilities that are adequate for the carrying out of hairdressing.
- (2) The premises must be provided with facilities that are adequate for the purpose of storing hairdressing appliances and utensils in a hygienic manner.
- (3) The premises must be provided with floor coverings, shelves, fittings and furniture that are suitable for the carrying out of hairdressing.
- (4) Without limiting the generality of subsections (1) and (3)—
  - (a) premises are not provided with washing facilities that are adequate for the carrying out of hairdressing unless those facilities include wash basins fitted with common spouts for the supply of hot and cold running water, and
  - (b) shelves, fittings and furniture are unsuitable for the carrying out of hairdressing unless they are constructed of, or covered with, material that is durable, smooth, impervious to moisture and capable of being easily cleaned.

## **Part 3 Standards for beauty salons**

### **11 Structural requirements**

- (1) The premises must be structurally suitable for the provision of beauty treatment.
- (2) Without limiting the generality of subsection (1), premises are structurally unsuitable for the provision of beauty treatment if any wash basin is situated against any wall and that wall (from floor level to a height of 450 millimetres above the top of the wash basin and from the centre of the wash basin to a distance of 150 millimetres beyond each side of the wash basin) is not constructed of, or covered with, material that is durable, smooth, impervious to moisture and capable of being easily cleaned.

## **12 Hygiene**

- (1) The premises must be clean and in good repair.
- (2) The premises must be provided with facilities that are adequate for the purpose of keeping beauty treatment appliances and utensils clean.

## **13 Beauty facilities**

- (1) The premises must be provided with washing, drainage, ventilation and lighting facilities that are adequate for the provision of beauty treatment.
- (2) The premises must be provided with facilities that are adequate for the purpose of storing beauty treatment appliances and utensils in a hygienic manner.
- (3) The premises must be provided with floor coverings, shelves, fittings and furniture that are suitable for the provision of beauty treatment.
- (4) Without limiting the generality of subsections (1) and (3)—
  - (a) premises are not provided with washing facilities that are adequate for the provision of beauty treatment unless those facilities include wash basins fitted with common spouts for the supply of hot and cold running water, and
  - (b) shelves, fittings and furniture are unsuitable for the provision of beauty treatment unless they are constructed of, or covered with, material that is durable, smooth, impervious to moisture and capable of being easily cleaned.

## **Part 4 Standards for mortuaries**

### **14 Water supply and sewerage**

- (1) The mortuary must be connected to a permanent water supply in compliance with the requirements of the local water supply authority.
- (2) A backflow prevention device complying with the requirements of Part 6 of this Regulation and specified by the local water supply authority must be provided between the water supply and all equipment, appliances, fittings and areas in the mortuary.
- (3) The mortuary must be connected to a water carriage sewerage system approved by the local water supply authority.

### **15 Closet and ablution facilities**

- (1) The mortuary must be provided with—
  - (a) separate water closets for the persons of each sex at the rate of 1 water closet for every 20 persons or part of 20 persons of each sex working in or about the mortuary at any one time, and
  - (b) shower facilities approved by the council, with an adequate supply of hot and cold water, for use by persons working in or about the mortuary, and
  - (c) a hand wash basin, with an adequate supply of hot and cold water, adjacent to each water closet in the mortuary.
- (2) Water closet and shower facilities must be provided with an air lock approved by the council between those facilities and any other part of the premises.

### **16 Construction**

- (1) The mortuary must be physically separated from all public areas of the building in which it is situated but may be integral with the construction of the remainder of the building.

- (2) A body preparation room, capable of being sealed off from the remainder of the premises, must be provided in the mortuary.
- (3) The body preparation room must have—
  - (a) a floor area of not less than 9.3 square metres, and
  - (b) a ceiling height of not less than 2.4 metres measured above the finished floor level, and
  - (c) the floor constructed of impervious material with a smooth unbroken surface and uniformly graded to discharge liquids to a floor drain, and
  - (d) a floor drain discharging through a removable screen so as to prevent the discharge of any solid material to the sewerage system, and
  - (e) all walls and partitions constructed of impervious materials with a smooth unbroken finish capable of being readily cleansed, and
  - (f) all joints between the floor, walls, partitions, ceiling, ventilation grilles, fittings, pipework, windows and light fittings sealed with impervious material so as to facilitate cleansing, and
  - (g) all joints between the floor and walls or partitions provided with coving of not less than 75 millimetres radius so as to facilitate cleansing, and
  - (h) all external windows fitted with flyproof screens, and
  - (i) all external doors fitted with self-closing fly screen doors or other suitable apparatus to prevent the entry of flies.
- (4) In any mortuary constructed after 1 July 1993, all walls and partitions of the body preparation room must be of brick or masonry construction finished in compliance with subsection (3)(e).

**Note.** The following standards also apply under other legislation as at the commencement of this Regulation—

Body preparation room—clause 51 of the *Public Health Regulation 2012*.

Vehicles—clause 52 of the *Public Health Regulation 2012*.

## **Part 5 Standards for keeping birds or animals**

### **Division 1 Keeping of swine**

#### **17 Swine not to pollute**

- (1) Swine must not be kept in such a place or manner as to pollute any water supplied for use (or used, or likely to be used)—
  - (a) by a person for drinking or domestic purposes, or
  - (b) in a dairy.
- (2) Swine's dung must not be deposited in such a place or manner as to pollute any water referred to in subsection (1).

#### **18 Swine not to be kept near certain premises**

- (1) Without limiting section 17 of this Schedule, swine must not be kept (and swine's dung must not be deposited) within 60 metres (or such greater distance as the council may determine in a particular case) of a dwelling, shop, office, factory, church or other place of public worship, workshop, school or public place in a city, town, village or other urban part of an area.
- (2) A greater distance determined under this section applies to a person only if the council has served an order under section 124 of the Act to that effect on the person.

## **Division 2 Keeping of poultry**

### **19 Poultry not to be nuisance or health risk**

- (1) Poultry must not be kept under such conditions as to create a nuisance or to be dangerous or injurious to health.
- (2) Poultry yards must at all times be kept clean and free from offensive odours.

### **20 Poultry not to be kept near certain premises**

- (1) Fowls (that is, birds of the species *Gallus gallus*) or guinea fowls must not be kept within 4.5 metres (or such greater distance as the council may determine in a particular case) of a dwelling, public hall, school or premises used for the manufacture, preparation, sale or storage of food.
- (2) Poultry (other than fowls referred to in subsection (1)) must not be kept within 30 metres of any building referred to in subsection (1).
- (3) The floors of poultry houses must be paved with concrete or mineral asphalt underneath the roosts or perches. However, this subsection does not apply to poultry houses—
  - (a) that are not within 15.2 metres of a dwelling, public hall or school, or
  - (b) that are situated on clean sand.
- (4) Poultry yards must be so enclosed as to prevent the escape of poultry.
- (5) The standards in this section apply to a person only if the council has served an order under section 124 of the Act to that effect on the person.

## **Division 3 Keeping of horses and cattle**

### **21 Horses and cattle not to be kept near certain premises**

- (1) Horses and cattle must not be kept within 9 metres (or such greater distance as the council may determine in a particular case) of a dwelling, school shop, office, factory, workshop, church or other place of public worship, public hall or premises used for the manufacture, preparation or storage of food.
- (2) The floors of stables must be paved with concrete or mineral asphalt or other equally impervious material, and must be properly graded to drain.
- (3) Horse yards and cattle yards must be so enclosed as to prevent the escape of horses and cattle.
- (4) The standards in this section apply to a person only if the council has served an order under section 124 of the Act to that effect on the person.

## **Part 6 Standards for disposal of certain waste**

### **22 Disposal of human waste**

- (1) Human waste brought to a depot is to be disposed of by emptying the contents of the human waste pans directly into a trench and by covering the human waste with at least 250 mm of earth.
- (2) Human waste is not to be left exposed in the trench, and the trench is not to be used again for the disposal of human waste until the contents of the trench have become assimilated with the soil.
- (3) A trench—

- (a) must be of adequate length, and
  - (b) must be not more than 600 mm wide, and
  - (c) must be not more than 600 mm or less than 250 mm deep (or of a depth approved by the Secretary of the Ministry of Health).
- (4) If the Secretary of the Ministry of Health has given (and not withdrawn) written approval of a method of disposal of human waste different from the method specified in subsection (1), that method may be used.
- (5) Except as otherwise provided in this Schedule, human waste is not to be spilt, emptied or deposited elsewhere than at a depot.

### **23 Emptying of cesspits and chemical closets**

- (1) Cesspits and chemical closets are to be emptied at least once every 6 months.
- (2) However, if the council considers it necessary for cesspits and chemical closets to be emptied more often, they are to be emptied as often as the council requires.
- (3) The contents of cesspits are to be removed to a depot in a watertight covered vehicle or in airtight covered pans.
- (4) The vehicle or pans are to be emptied at the depot and must be thoroughly cleansed before they are used again.
- (5) Cesspits are not to be emptied between 5 am and 10 pm.

### **24 Accumulation of sludge**

- (1) The receptacle of a septic closet is to be emptied and cleansed when the sludge accumulates to a height of 100 mm below the bottom inlet opening of the square junction outlet pipe.
- (2) However, if the council considers it necessary for receptacles to be emptied and cleansed more often, they are to be emptied and cleansed as often as the council requires.

### **25 Removal and cleaning of pans**

- (1) The pan of every closet and urinal (with its contents) is to be removed and replaced with a cleansed, empty pan at least once every 7 days.
- (2) However, if the council considers it necessary for pans to be removed and replaced more often, they are to be removed and replaced as often as the council requires.
- (3) On removal, the pan is to be covered with an airtight lid, taken in a closed vehicle (or other vehicle approved by the Secretary of the Ministry of Health) to a depot and emptied.
- (4) Before it is removed from the depot or supplied for use on any premises, the pan is to be thoroughly washed and cleansed with hot water and subjected to steam under pressure in an apparatus approved by the Secretary of the Ministry of Health.
- (5) Alternatively, the pan is to be thoroughly washed and cleansed with hot water in an automatic washing and tarring machine in which the pan is immersed in a bath of molten tar at a minimum temperature of 127°C for at least 2½ minutes.
- (6) If airtight pans of a pattern or description that has been approved by the Secretary of the Ministry of Health are used, the council may authorise the removal of human waste to be carried out at any hour of the day, but otherwise removal is not to take place between 5 am and 10 pm.



- (7) This section does not apply where the sanction of the Secretary of the Ministry of Health and the consent of the council have been given to the removal of human waste by the occupier of the premises on which it is stored.

**26 Removal and cleaning of pans by owner or occupier**

- (1) An owner or occupier is to empty and cleanse—
- (a) the pan of every closet on his or her premises at least once every 7 days, and
  - (b) the receptacle of a chemical closet when directed to do so by the council, and
  - (c) the receptacle of a septic closet when the sludge accumulates to a height of 100 mm below the bottom inlet opening of the square junction outlet pipe (or more often, if the council so requires).
- (2) The owner or occupier is to dispose of the human waste as provided by section 22 of this Schedule.

**27 Vehicle, utensils and apparatus to be kept clean**

- (1) Vehicles used for conveying pans, and receptacles, utensils and apparatus used in the collection or disposal of human waste, are to be thoroughly washed on arrival at a depot after the day's use and are to be maintained in a clean condition.
- (2) The steaming and washing appliances are to be properly set up in a suitable structure with a weatherproof roof and enclosed on at least 2 sides. The structure is to be kept clean.
- (3) The structure is to have a cement concrete floor rendered to a smooth surface and evenly graded to a drain.
- (4) Drainage from washing and steaming appliances is to be disposed of in shallow trenches of the kind used for the disposal of human waste.

## Schedule 4 Counting of votes under optional preferential system

(Sections 351 and 351A)

### 1 General

This Schedule sets out the method of counting votes according to the optional preferential system. The counting is to be carried out under the supervision of the returning officer.

### 2 Definitions

In this Schedule—

***absolute majority of votes*** means a greater number than one-half of the whole number of ballot-papers other than informal and exhausted ballot-papers.

***continuing candidate*** means a candidate not already elected or excluded from the count.

***exhausted ballot-paper*** means a ballot-paper on which there is no indication of a next preference for a continuing candidate.

***next preference*** means the first of the subsequent preferences marked on a ballot-paper that is not given to an elected or excluded candidate. However, if there is a repetition or omission in the consecutive numbering of preferences marked on a ballot-paper (other than a repetition or omission that makes the ballot-paper informal), only those preferences preceding the repetition or omission can be taken into account.

***unrejected ballot-papers*** means all ballot-papers not rejected as informal.

### 3 Counting of votes

- (1) The votes are to be counted and the result of the election ascertained in accordance with the following procedures—
  - (a) the unrejected ballot-papers are arranged under the names of the respective candidates by placing in a separate parcel all those on which a first preference is indicated for the same candidate,
  - (b) the total number of first preferences given for each candidate on such ballot-papers are then counted,
  - (c) the candidate who has received the largest number of first preference votes is elected if that number constitutes an absolute majority of votes,
  - (d) if no candidate has received an absolute majority of first preference votes, a second count is made,
  - (e) on the second count the candidate who has received the fewest first preference votes is excluded, and each unexhausted ballot-paper counted to him or her is counted to the candidate next in the order of the voter's preference,
  - (f) if a candidate then has an absolute majority of votes, he or she is elected, but if no candidate then has an absolute majority of votes, the process of excluding the candidate who has the fewest votes and counting each of his or her unexhausted ballot-papers to the continuing candidate next in the order of the voter's preference is repeated until one candidate has received an absolute majority of votes,
  - (g) the candidate who has received an absolute majority of votes is elected.
- (2) Any exhausted ballot-papers are set aside as finally dealt with and are not taken into account in the election of a candidate.

## **6 Equality**

- (1) If, on any count at which the candidate with the fewest number of votes has to be excluded, 2 or more candidates have an equal number of votes (that number being fewer than the number of votes that any other candidate has or those candidates being the only continuing candidates)—
  - (a) the candidate who had the fewest votes at the last count before the equality occurred is excluded, or
  - (b) if they had an equal number of votes at all preceding counts, the returning officer is to exclude a candidate by an approved method of random selection (including by electronic means).

## **7 End of counting**

The process of counting each of the unexhausted ballot-papers of an excluded candidate to the continuing candidate next in the order of the voter's preference is not repeated if there is only one continuing candidate. Instead, that continuing candidate is elected.

## **8 Records and returns of voting**

- (1) At each step of the proceedings the returning officer is to keep a record of the number of votes counted for each candidate, the exclusion of candidates and the transfer of their votes, the votes that are found to be informal and the votes that at some stage become exhausted votes.
- (2) As soon as is reasonably practical after the declaration of the election, the election manager is to publish the results of the election (including a record of the voting, counting and transfers) on the election manager's website.

## **9 Electronic counting of votes**

If votes are counted using electronic counting equipment, the returning officer may determine that a reference in this Schedule to the physical arrangement or movement of ballot-papers is not applicable if the equivalent process is performed electronically.

## Schedule 5 Counting of votes under proportional system

(Sections 351 and 351A)

### 1 General

This Schedule sets out the method of counting votes according to the proportional system. The counting is to be carried out under the supervision of the returning officer.

### 2 Definitions

In this Schedule—

*continuing candidate* means at any given time a candidate not already elected or not already excluded from the poll.

*elected candidate* means the following—

- (a) a candidate who has obtained a quota of votes,
- (b) a candidate who is elected under section 11 of this Schedule.

*exhausted ballot-paper* means a ballot-paper on which there is no indication of a next preference for a continuing candidate.

*fraction* includes a decimal fraction.

*next preference* means the first of the subsequent preferences marked on a ballot-paper that is not given to an elected or excluded candidate. However, if there is a repetition or omission in the consecutive numbering of preferences marked on a ballot-paper (other than a repetition or omission that makes the ballot-paper informal), only those preferences preceding the repetition or omission can be taken into account.

*quota* means the number of votes sufficient to elect a candidate.

*surplus*, at any given time, means the number of votes which a candidate has obtained at that time in excess of the quota.

### 3 Count of first preferences

The ballot-papers are to be examined and the number of first preferences obtained by each candidate and the aggregate number of first preferences are to be counted.

### 4 Quota

The aggregate number of first preferences is divided by one more than the number of candidates to be elected. The quotient (disregarding any remainder), increased by one, becomes the quota.

### 5 Election on first preferences

- (1) A candidate who has, upon the first preferences being counted, a number of first preferences equal to or greater than the quota is elected.
- (2) If the number of first preferences obtained by the candidate is equal to the quota, all the ballot-papers on which first preferences are recorded for that candidate are set aside as finally dealt with.

### 6 Surplus on first count

- (1) If the number of first preferences obtained by any elected candidate exceeds the quota, the surplus is to be transferred to the continuing candidates next in the order of voters' preferences, in accordance with the following directions—
  - (a) the ballot-papers on which first preferences are recorded for the elected candidate are re-examined, and the number of second preferences, or (in

accordance with section 12 of this Schedule) third or next consecutive preferences, recorded on them for each continuing candidate and the number of exhausted ballot-papers is counted,

- (b) the surplus is to be divided by the total number of first preferences recorded for such an elected candidate (excluding any exhausted ballot-papers). The **transfer value** is equal to the resulting fraction or (if the fraction exceeds 1) to 1,
  - (c) the number of second or other preferences, ascertained in paragraph (a) as being recorded for each continuing candidate, is multiplied by the transfer value,
  - (d) the resulting number (disregarding any fraction) for each continuing candidate is added to the number of votes obtained by the continuing candidate on the counting of first preferences and all those ballot-papers are to be transferred to the continuing candidate.
- (2) However, this section is subject to section 11 of this Schedule, and if at any time there is one remaining vacancy which can be filled under that section, no further transfer under this section can be made.

## 7 Surplus on transfer

- (1) If by a transfer of a surplus on the count of first preferences or of a surplus under this section the number of votes obtained by a candidate equals or exceeds the quota, the candidate is elected.
- (2) In that case, despite the fact that the candidate has reached the quota and is elected, the transfer is to be completed, and all the votes to which the candidate is entitled from the transfer are to be transferred to the candidate.
- (3) If by a transfer the number of votes obtained by a candidate equals the quota, the whole of the ballot-papers on which those votes are recorded are set aside as finally dealt with, being the ballot-papers by which that candidate is elected.
- (4) If by a transfer the number of votes obtained by a candidate exceeds the quota, the surplus is transferred to the continuing candidates next in the order of the voters' respective preferences in the following manner—
  - (a) the number of surplus votes is to be divided by the number of votes received by the elected candidate (excluding the aggregate value of any exhausted votes). The **surplus fraction** is equal to the resulting fraction or (if the fraction exceeds 1) to 1,
  - (b) in relation to any particular ballot-papers for surplus votes of the elected candidate, the surplus fraction is to be multiplied by the transfer value at which those ballot-papers were transferred to the elected candidate, or by one if they expressed first preference votes for the elected candidate, and the product is to be the **continued transfer value** of those particular ballot papers,
  - (c) the total number of ballot-papers for surplus votes of the elected candidate that each—
    - (i) express the next available preference for a particular continuing candidate, and
    - (ii) have a particular continued transfer value,are to be multiplied by that continued transfer value and the number obtained (disregarding any fraction) is to be added to the number of votes of the continuing candidate and all those ballot papers are to be transferred to the continuing candidate.

- (5) However, this section is subject to section 11 of this Schedule, and if at any time there is one remaining vacancy which can be filled under that section, no further transfer under this section can be made.
- (6) For the purposes of excluding the aggregate value of any exhausted votes under subsection (4)(a), the exhausted votes are to be excluded at the value that the votes were transferred to the candidate.

## **8 Transfer of surpluses**

- (1) If, on the counting of the first preferences or on any transfer, more than one candidate has a surplus, the largest of the surpluses is transferred, then the next largest, and so on.
- (2) However, if there is an untransferred surplus obtained at a previous count or transfer, that surplus is transferred before those caused by subsequent transfers.
- (3) If there are equal surpluses at the first count, the returning officer decides by lot which surplus is transferred first.
- (4) If there are equal surpluses at a later count or at a transfer, the surplus of the candidate who was the highest on the poll at the count or transfer at which the tied candidates last had an unequal number of votes is the first to be transferred. If those candidates have had an equal number of votes at all preceding counts or transfers, the returning officer decides by lot which candidate's surplus is the first to be transferred.

## **9 Exclusion of lowest candidates**

- (1) If, after the first preferences have been counted and transfers of surpluses have been made, fewer than the number of candidates required to be elected have obtained the quota, the candidate lowest on the poll is excluded.
- (2) The votes of the excluded candidate are to be transferred to the continuing candidates as follows—
  - (a) the total number of ballot-papers of the excluded candidate on which first preferences are recorded and which express a next available preference for a particular continuing candidate are to be transferred (each ballot-paper at a transfer value of one) to that continuing candidate and added to the number of votes of the continuing candidate,
  - (b) the total number (if any) of other votes obtained by the excluded candidate on transfers under this Schedule are to be transferred from the excluded candidate in the order of the transfers on which the excluded candidate obtained them (the votes obtained on the earliest transfer being transferred first) as follows—
    - (i) the total number of ballot-papers transferred to the excluded candidate from a particular candidate and expressing a next available preference for a particular continuing candidate are to be multiplied by the transfer value at which the votes were transferred to the excluded candidate,
    - (ii) the number so obtained (disregarding any fraction) is to be added to the number of votes of the continuing candidate,
    - (iii) all those ballot papers are to be transferred to the continuing candidate.
- (3) Any exhausted ballot-papers are set aside as finally dealt with.
- (4) The same process of exclusion and transfer is repeated until all the candidates, except the number required to be elected, have been excluded. At that point, the continuing candidates who have not already been elected are elected.
- (5) Whenever it becomes necessary to exclude a candidate and two or more candidates have the same number of votes and are lowest on the poll, the one who was lowest

on the poll at the last count or transfer at which they had an unequal number of votes is first excluded.

- (6) If those candidates have had equal numbers of votes at all preceding counts or transfers, or there has been no preceding count, the returning officer decides by lot which candidate is first excluded.
- (7) This section is subject to section 11 of this Schedule, and if at any time there is one remaining vacancy which can be filled under that section, no further exclusion under this section can be made.

#### **10 Effect of reaching quota while transfers are proceeding**

- (1) If by a transfer under section 9 of this Schedule, the number of votes obtained by a candidate equals or exceeds the quota, the candidate is elected.
- (2) In that case, despite the fact that the candidate has reached the quota, the transfer is to be completed, and all the votes to which the candidate is entitled from the transfer are to be transferred to the candidate.
- (3) If by a transfer under section 9 of this Schedule, the number of votes obtained by a candidate equals the quota, the whole of the ballot-papers on which those votes are recorded are set aside as finally dealt with, being the ballot-papers by which the candidate is elected.
- (4) If by a transfer under section 9 of this Schedule, the number of votes obtained by a candidate exceeds the quota, the surplus is transferred to the continuing candidates next in the order of the voters' respective preferences in the manner set out in section 7(4) of this Schedule.

#### **11 Election without reaching quota**

- (1) When the number of continuing candidates is reduced to the number of vacancies remaining unfilled the continuing candidates are elected, even if they have not reached the quota.
- (2) When only one vacancy remains unfilled and the votes of one continuing candidate exceed the total of all the votes of the other continuing candidates, together with any surplus not transferred, that candidate is elected.
- (3) When more than one vacancy remains unfilled and the votes of the candidate who (if all the vacancies were filled by the successive election of the continuing candidates with the largest number of votes) would be the last to be elected exceed the total of any surplus not transferred plus the votes of all the continuing candidates with fewer votes than that candidate, that candidate and all the other continuing candidates who do not have fewer votes than that candidate are elected.
- (4) When only one vacancy remains unfilled, and there are only 2 continuing candidates, and those 2 candidates each have the same number of votes, and no surplus votes remain capable of transfer, one candidate is excluded in accordance with section 9(5) and (6) of this Schedule and the other is elected.

#### **12 Determining order of preference**

In determining which candidate is next in the order of the voter's preference, any candidates who have been declared elected or who have been excluded are not considered, and the order of the voter's preference is determined as if the names of those candidates had not been on the ballot-paper.

### **13 Deciding by random selection**

A matter that is required to be decided by the returning officer by lot under this Schedule is to be decided by an approved method of random selection (including by electronic means).

### **14 Check counting**

- (1) A scrutineer may at any time during the counting of the votes, either before the commencement or after the completion of the transfer of the votes (whether original or transferred votes) of any candidate, request the returning officer to make a check count of the papers then comprised in the parcels of all or any candidates (but not of papers set aside as finally dealt with).
- (2) The returning officer is to make a check count immediately on receiving the request, unless the returning officer has already made a check count of the same votes.
- (3) The returning officer may also recount votes as often as he or she thinks necessary to establish accuracy.

### **15 Records and publication of results**

- (1) At each step of the proceedings the returning officer is to keep a record of the following—
  - (a) the number of votes counted for each candidate,
  - (b) the transfer of surpluses,
  - (c) votes lost through the disregarding of any fractions of votes during the process of transfer,
  - (d) the exclusion of candidates and the transfer of their votes,
  - (e) the votes which are found to be informal,
  - (f) the votes which at some stage become exhausted votes.
- (2) As soon as is reasonably practical after the declaration of the election, the election manager is to publish the results of the election (including a record of the voting, counting and transfers) on the election manager's website.

### **16 Electronic counting of votes**

If votes are counted using electronic counting equipment, the returning officer may determine that a reference in this Schedule to the physical arrangement or movement of ballot papers is not applicable if the equivalent process is performed electronically.



## Schedule 7 Election of mayor by councillors

(Section 394)

### Part 1 Preliminary

#### 1 Returning officer

The general manager (or a person appointed by the general manager) is the returning officer.

#### 2 Nomination

- (1) A councillor may be nominated without notice for election as mayor or deputy mayor.
- (2) The nomination is to be made in writing by 2 or more councillors (one of whom may be the nominee). The nomination is not valid unless the nominee has indicated consent to the nomination in writing.
- (3) The nomination is to be delivered or sent to the returning officer.
- (4) The returning officer is to announce the names of the nominees at the council meeting at which the election is to be held.

#### 3 Election

- (1) If only one councillor is nominated, that councillor is elected.
- (2) If more than one councillor is nominated, the council is to resolve whether the election is to proceed by preferential ballot, by ordinary ballot or by open voting.
- (3) The election is to be held at the council meeting at which the council resolves on the method of voting.
- (4) In this section—  
*ballot* has its normal meaning of secret ballot.  
*open voting* means voting by a show of hands or similar means.

### Part 2 Ordinary ballot or open voting

#### 4 Application of Part

This Part applies if the election proceeds by ordinary ballot or by open voting.

#### 5 Marking of ballot-papers

- (1) If the election proceeds by ordinary ballot, the returning officer is to decide the manner in which votes are to be marked on the ballot-papers.
- (2) The formality of a ballot-paper under this Part must be determined in accordance with section 345 of this Regulation as if it were a ballot-paper referred to in that section.
- (3) An informal ballot-paper must be rejected at the count.

#### 6 Count—2 candidates

- (1) If there are only 2 candidates, the candidate with the higher number of votes is elected.
- (2) If there are only 2 candidates and they are tied, the one elected is to be chosen by lot.

## 7 Count—3 or more candidates

- (1) If there are 3 or more candidates, the one with the lowest number of votes is to be excluded.
- (2) If 3 or more candidates then remain, a further vote is to be taken of those candidates and the one with the lowest number of votes from that further vote is to be excluded.
- (3) If, after that, 3 or more candidates still remain, the procedure set out in subsection (2) is to be repeated until only 2 candidates remain.
- (4) A further vote is to be taken of the 2 remaining candidates.
- (5) Section 6 of this Schedule then applies to the determination of the election as if the 2 remaining candidates had been the only candidates.
- (6) If at any stage during a count under subsection (1) or (2), 2 or more candidates are tied on the lowest number of votes, the one excluded is to be chosen by lot.

## Part 3 Preferential ballot

### 8 Application of Part

This Part applies if the election proceeds by preferential ballot.

### 9 Ballot-papers and voting

- (1) The ballot-papers are to contain the names of all the candidates. The councillors are to mark their votes by placing the numbers “1”, “2” and so on against the various names so as to indicate the order of their preference for all the candidates.
- (2) The formality of a ballot-paper under this Part is to be determined in accordance with section 345 of this Regulation as if it were a ballot-paper referred to in that section.
- (3) An informal ballot-paper must be rejected at the count.

### 10 Count

- (1) If a candidate has an absolute majority of first preference votes, that candidate is elected.
- (2) If not, the candidate with the lowest number of first preference votes is excluded and the votes on the unexhausted ballot-papers counted to him or her are transferred to the candidates with second preferences on those ballot-papers.
- (3) A candidate who then has an absolute majority of votes is elected, but, if no candidate then has an absolute majority of votes, the process of excluding the candidate who has the lowest number of votes and counting each of his or her unexhausted ballot-papers to the candidates remaining in the election next in order of the voter’s preference is repeated until one candidate has received an absolute majority of votes. The latter is elected.
- (4) In this section, *absolute majority*, in relation to votes, means a number that is more than one-half of the number of unexhausted formal ballot-papers.

### 11 Tied candidates

- (1) If, on any count of votes, there are 2 candidates in, or remaining in, the election and the numbers of votes cast for the 2 candidates are equal—the candidate whose name is first chosen by lot is taken to have received an absolute majority of votes and is therefore taken to be elected.
- (2) If, on any count of votes, there are 3 or more candidates in, or remaining in, the election and the numbers of votes cast for 2 or more candidates are equal and those

candidates are the ones with the lowest number of votes on the count of the votes—the candidate whose name is first chosen by lot is taken to have the lowest number of votes and is therefore excluded.

## **Part 4 General**

### **12 Choosing by lot**

To choose a candidate by lot, the names of the candidates who have equal numbers of votes are written on similar slips of paper by the returning officer, the slips are folded by the returning officer so as to prevent the names being seen, the slips are mixed and one is drawn at random by the returning officer and the candidate whose name is on the drawn slip is chosen.

### **13 Result**

The result of the election (including the name of the candidate elected as mayor or deputy mayor) is—

- (a) to be declared to the councillors at the council meeting at which the election is held by the returning officer, and
- (b) to be delivered or sent to the Secretary and the Chief Executive Officer of Local Government NSW.

## Schedule 7A Election of chairpersons of joint organisations

(Section 397D)

### Part 1 Preliminary

#### 1 When election to be held

An election for chairperson of a joint organisation is to be held—

- (a) at the first meeting of the board after the joint organisation is established, and
- (b) at the first meeting of the board after the term of the chairperson expires, and
- (c) if the office of chairperson becomes vacant for any other reason.

#### 2 Returning officer

The returning officer is to be—

- (a) the executive officer of the joint organisation, or
- (b) if there is no executive officer, the Secretary or a person appointed by the Secretary.

#### 3 Notification of vacancy

- (1) The returning officer must give notice of the occurrence of a vacancy in the office of chairperson of the joint organisation to the Secretary (unless the returning officer is the Secretary) and to the general managers of the member councils of the joint organisation.
- (2) The returning officer is to do that within 7 days of the occurrence of the vacancy.
- (3) The notice is to set out the manner in which a person may be nominated as a candidate for election as chairperson.

#### 4 Nomination

- (1) A voting representative who is the mayor of a member council may be nominated without notice for election as chairperson of the joint organisation.
- (2) The nomination is to be made in writing by 2 or more mayors of member councils of the joint organisation (one of whom may be the nominee). The nomination is not valid unless the nominee has indicated consent to the nomination in writing.
- (3) The returning officer is to announce the names of the nominees at the board meeting at which the election is to be held.

#### 5 Election

- (1) If only one eligible voting representative of the joint organisation is nominated, that representative is elected.
- (2) If more than one eligible voting representative is nominated, the board is to resolve whether the election is to proceed by preferential ballot, by ordinary ballot or by open voting.
- (3) The election is to be held at the board meeting at which the joint organisation resolves on the method of voting.
- (4) In this section—  
**ballot** has its normal meaning of secret ballot.  
**open voting** means voting by a show of hands or similar means.

## **Part 2 Ordinary ballot or open voting**

### **6 Application of Part**

This Part applies if the election proceeds by ordinary ballot or by open voting.

### **7 Marking of ballot-papers**

- (1) If the election proceeds by ordinary ballot, the returning officer is to decide the manner in which votes are to be marked on the ballot-papers.
- (2) The formality of a ballot-paper under this Part must be determined in accordance with section 345 of this Regulation as if it were a ballot-paper referred to in that section.
- (3) An informal ballot-paper must be rejected at the count.

### **8 Count—2 candidates**

- (1) If there are only 2 candidates, the candidate with the higher number of votes is elected.
- (2) If there are only 2 candidates and they are tied, the one elected is to be chosen by lot.

### **9 Count—3 or more candidates**

- (1) If there are 3 or more candidates, the one with the lowest number of votes is to be excluded.
- (2) If 3 or more candidates then remain, a further vote is to be taken of those candidates and the one with the lowest number of votes from that further vote is to be excluded.
- (3) If, after that, 3 or more candidates still remain, the procedure set out in subsection (2) is to be repeated until only 2 candidates remain.
- (4) A further vote is to be taken of the 2 remaining candidates.
- (5) Section 8 of this Schedule then applies to the determination of the election as if the 2 remaining candidates had been the only candidates.
- (6) If at any stage during a count under subsection (1) or (2), 2 or more candidates are tied on the lowest number of votes, the one excluded is to be chosen by lot.

## **Part 3 Preferential ballot**

### **10 Application of Part**

This Part applies if the election proceeds by preferential ballot.

### **11 Ballot-papers and voting**

- (1) The ballot-papers are to contain the names of all the candidates. The voting representatives on the board are to mark their votes by placing the numbers “1”, “2” and so on against the various names so as to indicate the order of their preference for all the candidates.
- (2) The formality of a ballot-paper under this Part is to be determined in accordance with section 345 of this Regulation as if it were a ballot-paper referred to in that section.
- (3) An informal ballot-paper must be rejected at the count.

## 12 Count

- (1) If a candidate has an absolute majority of first preference votes, that candidate is elected.
- (2) If not, the candidate with the lowest number of first preference votes is excluded and the votes on the unexhausted ballot-papers counted to him or her are transferred to the candidates with second preferences on those ballot-papers.
- (3) A candidate who then has an absolute majority of votes is elected, but, if no candidate then has an absolute majority of votes, the process of excluding the candidate who has the lowest number of votes and counting each of his or her unexhausted ballot-papers to the candidates remaining in the election next in order of the voter's preference is repeated until one candidate has received an absolute majority of votes. That candidate is elected.
- (4) In this section, *absolute majority*, in relation to votes, means a number that is more than one-half of the number of unexhausted formal ballot-papers.

## 13 Tied candidates

- (1) If, on any count of votes, there are 2 candidates in, or remaining in, the election and the numbers of votes cast for the 2 candidates are equal—the candidate whose name is first chosen by lot is taken to have received an absolute majority of votes and is therefore taken to be elected.
- (2) If, on any count of votes, there are 3 or more candidates in, or remaining in, the election and the numbers of votes cast for 2 or more candidates are equal and those candidates are the ones with the lowest number of votes on the count of the votes—the candidate whose name is first chosen by lot is taken to have the lowest number of votes and is therefore excluded.

## Part 4 General

### 14 Choosing by lot

To choose a candidate by lot, the names of the candidates who have equal numbers of votes are written on similar slips of paper by the returning officer, the slips are folded by the returning officer so as to prevent the names being seen, the slips are mixed and one is drawn at random by the returning officer and the candidate whose name is on the drawn slip is chosen.

### 15 Result

The result of the election (including the name of the candidate elected as chairperson of the joint organisation) is—

- (a) to be declared to the representatives on the board at the board meeting at which the election is held by the returning officer, and
- (b) to be delivered or sent to the Secretary.

### 16 By-elections

- (1) Subject to subsection (2), a by-election to fill a vacancy in the office of chairperson of a joint organisation is to be held at the next meeting of the board of the joint organisation occurring after the vacancy occurs.
- (2) No such by-election is to be held if the vacancy occurs after an ordinary election of councillors under Chapter 10 of the Act and before an election of chairperson of the joint organisation in accordance with section 1(a) of this Schedule.

## Schedule 8 Election of chairpersons of county councils

(Section 395)

### Part 1 Preliminary

#### 1 When election to be held

An election for chairperson of a county council is to be held at the first meeting of the county council after—

- (a) the county council is established, and
- (b) the term of the chairperson of the county council has ended, and
- (c) the office of the chairperson becomes vacant under the Act, section 391(3)(b)(ii).

#### 2 Returning officer

The general manager of the county council in respect of which an election is being held (or a person appointed by the general manager) is the returning officer.

#### 3 Notification of vacancy

- (1) The general manager of the county council in respect of which an election is being held must give notice of the occurrence of a vacancy in the office of chairperson of the county council to the Secretary and to the general managers of the councils of the areas part or all of which constitute the county council electorate in which the vacancy has occurred.
- (2) The general manager is to do that within 7 days of the occurrence of the vacancy.

#### 4 Nomination

- (1) A member of a county council may be nominated without notice for election as chairperson of the county council.
- (2) The nomination is to be made in writing by 2 or more members of the county council (one of whom may be the nominee). The nomination is not valid unless the nominee has indicated consent to the nomination in writing.
- (3) The nomination is to be delivered or sent to the returning officer.
- (4) The returning officer is to announce the names of the nominees at the county council meeting at which the election is to be held.

#### 5 Election

- (1) If only one member of the county council is nominated, that member is elected.
- (2) If more than one member is nominated, the county council is to resolve whether the election is to proceed by preferential ballot, by ordinary ballot or by open voting.
- (3) The election is to be held at the county council meeting at which the county council resolves on the method of voting.
- (4) In this section—  
*ballot* has its normal meaning of secret ballot.  
*open voting* means voting by a show of hands or similar means.

## **Part 2 Ordinary ballot or open voting**

### **6 Application of Part**

This Part applies if the election proceeds by ordinary ballot or by open voting.

### **7 Marking of ballot-papers**

- (1) If the election proceeds by ordinary ballot, the returning officer is to decide the manner in which votes are to be marked on the ballot-papers.
- (2) The formality of a ballot-paper under this Part must be determined in accordance with section 345 of this Regulation as if it were a ballot-paper referred to in that section.
- (3) An informal ballot-paper must be rejected at the count.

### **8 Count—2 candidates**

- (1) If there are only 2 candidates, the candidate with the higher number of votes is elected.
- (2) If there are only 2 candidates and they are tied, the one elected is to be chosen by lot.

### **9 Count—3 or more candidates**

- (1) If there are 3 or more candidates, the one with the lowest number of votes is to be excluded.
- (2) If 3 or more candidates then remain, a further vote is to be taken of those candidates and the one with the lowest number of votes from that further vote is to be excluded.
- (3) If, after that, 3 or more candidates still remain, the procedure set out in subsection (2) is to be repeated until only 2 candidates remain.
- (4) A further vote is to be taken of the 2 remaining candidates.
- (5) Section 8 of this Schedule then applies to the determination of the election as if the 2 remaining candidates had been the only candidates.
- (6) If at any stage during a count under subsection (1) or (2), 2 or more candidates are tied on the lowest number of votes, the one excluded is to be chosen by lot.

## **Part 3 Preferential ballot**

### **10 Application of Part**

This Part applies if the election proceeds by preferential ballot.

### **11 Ballot-papers and voting**

- (1) The ballot-papers are to contain the names of all the candidates. The members of the county council are to mark their votes by placing the numbers “1”, “2” and so on against the various names so as to indicate the order of their preference for all the candidates.
- (2) The formality of a ballot-paper under this Part is to be determined in accordance with section 345 of this Regulation as if it were a ballot-paper referred to in that section.
- (3) An informal ballot-paper must be rejected at the count.



## 12 Count

- (1) If a candidate has an absolute majority of first preference votes, that candidate is elected.
- (2) If not, the candidate with the lowest number of first preference votes is excluded and the votes on the unexhausted ballot-papers counted to him or her are transferred to the candidates with second preferences on those ballot-papers.
- (3) A candidate who then has an absolute majority of votes is elected, but, if no candidate then has an absolute majority of votes, the process of excluding the candidate who has the lowest number of votes and counting each of his or her unexhausted ballot-papers to the candidates remaining in the election next in order of the voter's preference is repeated until one candidate has received an absolute majority of votes. That candidate is elected.
- (4) In this section, *absolute majority*, in relation to votes, means a number that is more than one-half of the number of unexhausted formal ballot-papers.

## 13 Tied candidates

- (1) If, on any count of votes, there are 2 candidates in, or remaining in, the election and the numbers of votes cast for the 2 candidates are equal—the candidate whose name is first chosen by lot is taken to have received an absolute majority of votes and is therefore taken to be elected.
- (2) If, on any count of votes, there are 3 or more candidates in, or remaining in, the election and the numbers of votes cast for 2 or more candidates are equal and those candidates are the ones with the lowest number of votes on the count of the votes—the candidate whose name is first chosen by lot is taken to have the lowest number of votes and is therefore excluded.

## Part 4 General

### 14 Choosing by lot

To choose a candidate by lot, the names of the candidates who have equal numbers of votes are written on similar slips of paper by the returning officer, the slips are folded by the returning officer so as to prevent the names being seen, the slips are mixed and one is drawn at random by the returning officer and the candidate whose name is on the drawn slip is chosen.

### 15 Result

The result of the election (including the name of the candidate elected as chairperson of the county council) is—

- (a) to be declared to the members of the county council at the county council meeting at which the election is held by the returning officer, and
- (b) to be delivered or sent to the Secretary and the Chief Executive Officer of Local Government NSW.

## Schedule 9 Election of members of county councils

(Section 396)

### Part 1 General

#### 1 When elections to be held

- (1) The first ordinary election of members of a county council is to be held within 2 months of its establishment.
- (2) Subsequent ordinary elections are to be held within 2 months after each ordinary election of councillors under Part 4 of Chapter 10 of the Act.
- (3) A by-election to fill an office vacated by a member is to be held within 2 months after the occurrence of the vacancy.
- (4) No such by-election is to be held if the vacancy occurs after an ordinary election of councillors under Chapter 10 of the Act and before an ordinary election of members of a county council.

#### 2 Notification of vacancy

- (1) The general manager of a county council must give notice of the occurrence of a vacancy in the office of a member of the county council to the Secretary and to the general managers of the councils of the areas part or all of which constitute the county council electorate in which the vacancy has occurred.
- (2) The general manager is to do that within 7 days of the occurrence of the vacancy.

### Part 2 Single area electorate

#### 3 Application of Part

This Part applies to the election of one or more members of a county council by the councillors of one constituent council, where the electorate comprises the whole or part of the area of that council only.

#### 4 Returning officer

The general manager of the constituent council (or a person appointed by that general manager) is the returning officer.

#### 5 Nomination

- (1) A councillor of the constituent council may be nominated for election as a member of the county council.
- (2) The nomination—
  - (a) may be made without notice by any councillor of the council, and
  - (b) is to be in writing delivered or sent to the returning officer, and
  - (c) is not valid unless the nominee has indicated consent to the nomination in writing.
- (3) The returning officer is to announce the names of the nominees at a council meeting.

#### 6 Election

- (1) If the number of candidates nominated is not more than the number of vacancies to be filled, those candidates are to be declared elected.

- (2) If there are more candidates nominated than the number to be elected, an election is to be determined by preferential ballot. The ballot is to be conducted by the preparation, marking and counting of ballot-papers in the presence of the council.

#### **7 Ballot-papers and voting**

- (1) The ballot-papers are to contain the names of all the candidates. The councillors are to mark their votes by placing the figures 1, 2 and so on against the various names so as to indicate the order of their preference for at least the number of candidates to be elected.
- (2) The formality of a ballot-paper under this Part is to be determined in accordance with section 345 of this Regulation as if it were a ballot-paper referred to in that section.
- (3) An informal ballot-paper is to be rejected at the scrutiny of votes.

#### **8 Count**

The votes are to be counted in accordance with Schedule 4 of this Regulation.

#### **9 Result**

The result of the election (including the names of the candidates elected as members) is—

- (a) to be declared to the councillors by the returning officer at the council meeting where the election is held, and
- (b) to be delivered or sent to the general manager of the county council and the Secretary.

### **Part 3 Joint electorate**

#### **Division 1 Preliminary**

##### **10 Application of Part**

This Part applies to the joint election of one or more members of a county council by the councillors of two or more constituent councils, where the electorate comprises the whole or parts of those councils' areas.

##### **11 Definitions**

In this Part—

*close of nominations*, in relation to an election, means the time and date for the close of nominations in the election, fixed by a notification under section 14 of this Schedule.

*close of the ballot*, in relation to an election, means the time and date for the close of the ballot in the election, fixed by a notification under section 14 of this Schedule.

*general manager* means the general manager of the county council in respect of which an election is being held.

*qualified elector*, in relation to a county council electorate, means a councillor of a constituent council within that electorate in the county council's area of operations.

#### **Division 2 Calling of election**

##### **12 Preferential system**

An election under this Part is to be by the optional preferential system.

### **13 Returning officer**

The returning officer is to be the general manager or a person appointed by the general manager (or, if no general manager has been appointed, a person appointed by the Minister).

### **14 Calling of election**

- (1) The returning officer must, as soon as practicable after an ordinary election of councillors or as soon as practicable after being notified in writing of circumstances requiring that an election be held under section 1(1) or (3) of this Schedule, cause to be given to each of the qualified electors a notification—
  - (a) stating that an election is to be held, and
  - (b) inviting nominations, and
  - (c) fixing the close of nominations, and
  - (d) fixing the close of the ballot.
- (2) The close of nominations is to be not less than 21 days nor more than 35 days after an ordinary election of councillors or after the returning officer is notified in writing of circumstances requiring that an election be held under section 1(1) or (3) of this Schedule.
- (3) The close of the ballot is to be not less than 21 days after the close of nominations.

## **Division 3 Nominations**

### **15 Nominations for elected member**

- (1) A nomination of a candidate at an election must contain the full names, full residential addresses and signatures of not less than 2 nominators, each being a qualified elector for the county council electorate in respect of which the election is to be held.
- (2) The nomination must also contain the full name and full residential address of the nominee and a statement signed by the nominee that the nominee consents to the nomination.
- (3) The returning officer must reject a nomination not made in accordance with this section or a nomination received by the returning officer after the close of nominations.

### **16 Withdrawal of nomination**

A candidate may withdraw from an election by notice in writing delivered to the returning officer at any time before the close of nominations.

### **17 Uncontested election**

If, by the close of nominations, the number of candidates is not greater than the number of vacancies, those candidates are elected.

### **18 Contested election**

If, by the close of nominations, the number of candidates is greater than the number of vacancies, a ballot is to be held.

## **Division 4 The ballot**

### **19 Printing of ballot-papers, directions to voters etc**

- (1) If a ballot is to be held, the returning officer—

- (a) must determine the order in which the candidates' names are to be listed on the ballot-paper by means of a ballot held in accordance with the procedure set out in section 303 of this Regulation, and
  - (b) must cause sufficient ballot-papers to be printed so that a ballot-paper can be forwarded to each qualified elector.
- (2) The ballot-paper must contain—
- (a) the names of the candidates, arranged in the order determined in accordance with subsection (1)(a), with a small square opposite each name, and
  - (b) if, in the opinion of the returning officer, the names of 2 or more candidates are so similar as to cause confusion, such other matter as will, in the opinion of the returning officer, distinguish between those candidates, and
  - (c) the directions as to the manner in which the vote is to be recorded, and the ballot-paper returned to the returning officer, required by subsection (3) or (4) and such other directions as the returning officer considers appropriate.
- (3) If only 1 candidate is to be elected, the directions to voters must include directions to the effect that—
- (a) the voter must record a vote for at least one candidate by placing the number “1” in the square opposite the name of the candidate for whom the voter wishes to give his or her first preference, and
  - (b) the voter may vote for additional candidates by placing consecutive numbers, beginning with the number “2”, in the squares opposite the names of those additional candidates in the order of the voter's preferences for them.
- (4) If 2 or more candidates are to be elected, the directions to voters must include directions to the effect that—
- (a) the voter must record a vote for at least the number of candidates which corresponds to the number of vacancies to be filled by placing the sequence of numbers corresponding to the number of vacancies to be filled in the squares opposite the names of the candidates in the order of the voter's preferences for them, and
  - (b) the voter may vote for additional candidates by placing consecutive numbers, beginning with the number corresponding to the number of vacancies to be filled, plus one, in the squares opposite the names of those additional candidates in the order of the voter's preferences for them.

## **20 Distribution of ballot-papers**

The returning officer must forward to each qualified elector—

- (a) a ballot-paper initialled by the returning officer or a person authorised by the returning officer in that behalf, and
- (b) an unsealed envelope addressed to the returning officer and bearing on the back the words “Name and address of voter” and “Signature of voter”, together with appropriate spaces for the insertion of the name, address and signature.

## **21 Duplicate ballot-papers**

- (1) If any person to whom a ballot-paper has been forwarded satisfies the returning officer by statutory declaration—
- (a) that the ballot-paper has been spoiled, lost or destroyed, and
  - (b) that the person has not already voted at the election to which the ballot-paper relates,

the returning officer may, at any time before the close of the ballot, forward to the voter a new ballot-paper and envelope.

- (2) The returning officer must maintain a record of all ballot-papers forwarded to voters under this section.

## **22 Recording of vote**

A qualified elector who wishes to vote at the election—

- (a) must record his or her vote on the ballot-paper in accordance with the directions shown on it, and
- (b) must place the completed ballot-paper (folded so that the vote cannot be seen) in the envelope addressed to the returning officer and forwarded with the ballot-paper, and
- (c) must seal the envelope, and
- (d) must state his or her full name and full address on, and sign, the back of the envelope, and
- (e) must return the envelope to the returning officer so as to be received by the returning officer before the close of the ballot.

## **Division 5 The scrutiny**

### **23 Receipt of ballot-papers**

- (1) In any ballot, the returning officer must reject any envelope purporting to contain a ballot-paper if the envelope—
  - (a) is received after the close of the ballot, or
  - (b) is unsealed,without opening the envelope or inspecting the ballot-paper.
- (2) On receipt, before the close of the ballot, of an envelope purporting to contain a ballot-paper, the returning officer must examine the name on the back of the envelope and—
  - (a) if satisfied that a person of that name is a qualified elector, must accept the ballot-paper in that envelope for scrutiny without opening the envelope, or
  - (b) if not so satisfied, or if a name, address or signature does not appear on the back of the envelope, must reject any ballot-paper in the envelope without opening the envelope.
- (3) If it appears to the returning officer that the signature appearing on the back of any envelope referred to in subsection (2) is not the signature of the person whose name and address appear on the back of the envelope, the returning officer may make such inquiries as the returning officer thinks fit and if, after making those inquiries, the returning officer is satisfied that the signature is not the signature of that person, must reject any ballot-paper in the envelope without opening the envelope.

### **24 Ascertaining result of ballot**

The result of the ballot is to be ascertained by the returning officer as soon as practicable after the close of the ballot.

### **25 Scrutineers**

Each candidate is entitled to appoint, by notice in writing, a scrutineer to represent the candidate at the scrutiny of votes in accordance with section 119 of the *Electoral Act 2017*.

## **26 Scrutiny of votes**

- (1) At the scrutiny of votes, a ballot-paper must be rejected if it is informal.
- (2) The formality of a ballot-paper under this Part is to be determined in accordance with section 345 of this Regulation as if it were a ballot-paper referred to in that section.
- (3) The scrutiny of votes in a ballot is to be conducted as follows—
  - (a) the returning officer is to produce, unopened, the envelopes containing the ballot-papers accepted for scrutiny, other than any envelope (purporting to contain a ballot-paper) rejected under section 23(3) of this Schedule,
  - (b) the returning officer is then to open each such envelope, extract the ballot-paper and, without unfolding it, place it in a securely fastened ballot-box,
  - (c) when the ballot-papers from all such envelopes have been placed in the ballot-box, the returning officer is then to unfasten the ballot-box and remove the ballot-papers,
  - (d) the returning officer is then to examine each ballot-paper and reject those which are informal,
  - (e) the returning officer is then to proceed to count the votes and ascertain the result of the election in accordance with Schedule 4 of this Regulation.

## **27 Notification of result of election**

As soon as practicable after candidates have been elected, the returning officer must notify the candidates, the general manager of each council participating in the joint election, the general manager of the county council and the Secretary in writing of the names of the candidates who have been declared elected.

## **Division 6 Miscellaneous**

### **28 Voting not compulsory**

Voting at an election of members of a county council under this Part is not compulsory.

### **29 Electoral roll**

- (1) For the purpose of preparing a roll of qualified electors for the purposes of this Part, the returning officer may (by notice in writing sent to the general managers of the councils participating in the joint election of the county council) require the general managers to furnish to the returning officer, within such time as may be specified in the notice, a list of the councillors for the time being of those councils.
- (2) A general manager of a council to whom such a notice is sent must comply with the requirements of the notice.

### **30 Death of candidate**

If a candidate for election as a member of a county council dies after the close of nominations and before the day when the poll at a contested election closes, the election fails in respect of the electorate for which the candidate is nominated.

### **31 Validity of elections**

- (1) An election is not invalid just because—
  - (a) there was a formal defect or error in or relating to the election, if the election was held substantially in accordance with this Regulation, or
  - (b) there was a defect in the appointment of the returning officer.

- (2) A proclamation of the Governor to the effect that a specified irregularity does not invalidate an election is conclusive as to the matter stated in the proclamation.

**32 Lapsed or void election**

- (1) If an election for the office of member of a county council is not held when it is due, fails or is later declared void—
- (a) the holder of the office at the time when the election should have been held or when the election failed (or, in the case of a void election, if there is no such holder, the candidate purporting to have been elected at the void election), holds the office as if duly elected until an election is held under paragraph (b), and
  - (b) the returning officer is to hold another election as if a casual vacancy had occurred in the office.
- (2) An election held for the purposes of this section is as valid as it would have been if it had been held at the time originally appointed for the purpose.

**33 Security of election materials**

- (1) The returning officer, after the election has been declared, is to parcel the marked and unmarked ballot-papers, copies of the roll, and other papers used in the election.
- (2) The returning officer is to seal, endorse and sign each parcel, and to allow any scrutineers entitled to be present to do the same to each parcel.
- (3) The returning officer is to forward the parcels to the general manager.
- (4) The general manager is to have the parcels kept securely for 6 months, and then destroyed.

**34 Decision of returning officer final**

If the returning officer is permitted or required by this Part to make a decision on any matter relating to the taking of a ballot in an election, the decision of the returning officer on that matter is final.

**35 Delegation of returning officer's functions**

The returning officer may delegate to any member of staff of the county council any of the returning officer's functions under this Part.

**36 Costs of election to be borne by the county council**

The costs of conducting an election under this Part are to be borne by the county council.



## Schedule 9A Countback elections

(Section 393C(1))

### Part 1 Preliminary

#### 1 Definitions

In this Schedule—

**ballot-paper** includes a vote record.

**close of applications**—see section 3(3) of this Schedule.

**eligible candidate**, in a countback election, means a person who has been declared by the returning officer under section 4(a) of this Schedule to have duly applied to be a candidate in the countback election.

**non-participating candidate** means a person who was a candidate at the original election and is neither an eligible candidate nor a previously elected councillor.

**original election**, in relation to a vacancy, means the ordinary election of councillors in respect of which the vacancy has occurred at which the vacating councillor was elected or in a case where the vacating councillor was elected under this Schedule, the councillor who was the predecessor (whether immediate, intermediate, or original) of that councillor, was elected.

**previously elected councillor** means a person who—

- (a) was elected as a councillor at the original election, or
- (b) was declared elected as a councillor under this Schedule after the original election.

**returning officer** means the person conducting the countback election in accordance with section 291A(4) of the Act.

**vacating councillor** means the person whose departure created the casual vacancy (even if that person never became a councillor).

**Note.** If a candidate who is nominated for election to a civic office in respect of a ward or area dies after the day when the poll at a contested election closes, but before the declaration of the election, the candidate is a “vacating councillor” even if that person never became a councillor by operation of section 233(2)(a) of the Act.

#### 2 Notice of casual vacancy

**Note.** Section 285 of this Regulation requires the general manager of a council of the area to give notice of a casual vacancy to the Electoral Commissioner within 7 days of its occurrence.

- (1A) After a casual vacancy occurs that is to be filled by a countback election, the general manager of the council concerned must, in relation to an election administered by an electoral services provider, give notice of the vacancy to the electoral services provider within 7 days.
- (1) After a casual vacancy occurs that is to be filled by a countback election, the electoral services provider concerned (in relation to an election administered by an electoral services provider) or the Electoral Commissioner (in relation to an election administered by the Electoral Commissioner) must—
  - (a) give notice of the vacancy to the returning officer who conducted the election at which the person whose departure created the casual vacancy was elected or, if it is not possible for the returning officer to conduct the countback election, the substitute returning officer at that earlier election, or
  - (b) if not possible for that returning officer or that substitute returning officer to conduct the countback election, appoint a returning officer in accordance with the Act.

- (2) The notice under subsection (1) must be given or appointment made—
  - (a) in relation to an election administered by an electoral services provider—within 14 days of the electoral services provider being notified of the casual vacancy under subsection (1A), or
  - (b) in relation to an election administered by the Electoral Commissioner—within 14 days of the Electoral Commissioner being notified of the casual vacancy under section 285 of this Regulation.
- (3) Within 14 days of being given notice or being appointed, the returning officer who is to conduct the countback election must—
  - (a) arrange for the publication of a notice of the casual vacancy as follows—
    - (i) in relation to an election administered by an electoral services provider—on both the council’s website and the electoral services provider’s website,
    - (ii) in relation to an election administered by the Electoral Commissioner—on the websites of the Electoral Commission and the relevant council, and
  - (b) give notice in accordance with this section to each person (at the person’s last known address or by email to an email address specified by the person for the giving of notice of this kind) who, in the opinion of the returning officer, may be entitled to make an application under this Schedule in relation to the vacancy.
- (4) The notice under subsection (3) must—
  - (a) declare that a casual vacancy in the office of a specified councillor exists that is to be filled by a countback election, and
  - (b) advise that a person may apply to be a candidate in accordance with this Schedule, and
  - (c) specify the date and time that applications close, and
  - (d) specify the date, time and place for the conduct of the countback election, and
  - (e) advise that an eligible candidate is entitled to appoint scrutineers for the countback election, and
  - (f) give the contact details of the returning officer.
- (5) The date for the conduct of the countback election must be the date which in the opinion of the returning officer is the earliest practicable date to conduct the countback election, but is—
  - (a) at least 14 days after the date of the publication of the notice of the relevant council’s website, and
  - (b) not more than 49 days after the date of the casual vacancy occurring.

### **3 Candidates for casual vacancy**

- (1) A person may apply to be a candidate in the countback election if the person—
  - (a) was a candidate at the original election, and
  - (b) did not withdraw the person’s nomination from, and was not elected at, that election, and
  - (c) is still eligible to be elected as a councillor at the close of applications.
- (1A) A person elected to the office of councillor or mayor at the original election, or at a countback election under this Schedule, who subsequently vacates the office by resignation or disqualification may not apply to be a candidate in a subsequent countback election.

- (2) An application under this section is to be made in the way approved by the election manager and must contain—
  - (a) a statement by the applicant that he or she consents to be a councillor if elected, and
  - (b) a declaration that the applicant is still eligible to become a councillor.
- (3) An application must be lodged with the returning officer before noon on the 10th day after the day on which public notice of the vacancy was given under this Schedule (the *close of applications*).
- (4) An applicant may withdraw his or her application by giving the returning officer written notice of withdrawal in the way approved by the election manager before applications close.
- (5) An application or a withdrawal of an application under this section may be made by electronic means approved by the election manager.

#### 4 Publication of candidates' details

If one or more persons have applied to be a candidate in accordance with this Schedule, the returning officer must, as soon as practicable after the close of applications—

- (a) publicly produce all the applications and declare each person who has duly applied to be a candidate (the *eligible candidates*), and
- (b) arrange for a notice containing particulars relating to each candidate to be published on the website of the relevant council.

#### 5 Determination of candidate to fill casual vacancy

- (1) If there is only one eligible candidate in relation to a casual vacancy, the returning officer must declare the candidate elected.
- (2) If there are no candidates in relation to a casual vacancy—
  - (a) the returning officer is to declare that there are no candidates and inform the general manager of the relevant council accordingly, and
  - (b) the countback election fails.  
**Note.** Section 291A(5)(b) of the Act provides that if a countback election fails a by-election must be held to fill the casual vacancy.
- (3) If there is more than one eligible candidate in relation to a casual vacancy, a countback election must be conducted in accordance with Part 2.

#### 6 Filling of multiple casual vacancies

- (1) If there is more than one casual vacancy to be filled at any time, the casual vacancy that occurred first is to be filled first.
- (2) If, in the opinion of the returning officer, it is impossible to determine which vacancy occurred first, the vacating councillor who was elected first (either at the same election or in point of time) is deemed to have left office before the other vacating councillor or councillors.
- (3) If it is still not possible to determine which vacancy occurred first despite subsection (2), the returning officer must determine which casual vacancy is to be filled first by an approved method of random selection (including by electronic means).
- (5) The returning officer may comply with section 5 of this Schedule in respect of a casual vacancy even while the returning officer or another returning officer is complying with that section in respect of another casual vacancy.

## Part 2 Countback procedures

### 7 Casual vacancy to be filled by recount

- (1) The countback election is to be conducted by a recount of the votes on the ballot-papers used in the counting of votes at the original election and the result is to be ascertained in accordance with Schedule 5.
- (2) On the recount under subsection (1) a preference indicated on a ballot-paper for a previously elected councillor whose seat has become vacant is to be disregarded and the ballot-paper is to be treated as if the numeral indicating any subsequent preference had been altered accordingly.
- (3) If on the recount under subsection (1) a non-participating candidate is elected that election has no effect and the returning officer is to terminate that recount and repeat the procedure of recounting the votes on the ballot-papers until an eligible candidate is elected.
- (4) On a recount under subsection (3) a preference indicated on a ballot-paper for—
  - (a) a previously elected councillor whose seat has become vacant, or
  - (b) a non-participating candidate who has been elected on the recount under subsection (1) or on a previous recount under subsection (3),is to be disregarded and the ballot-paper is to be treated as if the numeral indicating any subsequent preference had been altered accordingly.
- (4A) If, on any recount under this Schedule, more than one candidate would be elected, the following applies instead—
  - (a) only one candidate is taken to be elected, being the candidate who has the highest number of votes,
  - (b) if 2 or more candidates have an equal number of votes—
    - (i) if the number of votes at the last count or transfer was unequal—the candidate who had the highest number of votes at the last count or transfer at which the candidates had an unequal number of votes is taken to be elected, or
    - (ii) otherwise—the elected candidate is to be determined by a method of random selection, including by electronic means, approved by the election manager.
- (5) A recount under this Schedule does not affect the election of a previously elected councillor and where a previously elected councillor is elected or excluded during a recount that election or exclusion has effect for the purposes of the continuation of the recount and for those purposes only.
- (6) If no recount under subsection (1) or (3) results in the election of an eligible candidate—
  - (a) the returning officer is to declare that the countback election has failed, and
  - (b) inform the general manager of the relevant council accordingly.

**Note.** Section 291A(5)(b) of the Act provides that if a countback election fails a by-election must be held to fill the casual vacancy.

### 8 Declaration of result

- (1) As soon as possible after the conclusion of the countback election, the returning officer must—
  - (a) inform the persons present of the result, and
  - (b) immediately notify the election manager of the result, and

- (c) inform the participating eligible candidates (in person, in writing, by facsimile, by telephone, by email, by text message or in any other way) as soon as practicable after the result is ascertained—
  - (i) of the result of the countback, and
  - (ii) when the returning officer's declaration under this section will be available for inspection at the office of the relevant council, and
  - (iii) that the information contained in a notice under subsection (5) is to be published on the election manager's website for at least one month.

**Note.** Section 353 (Recount) of this Regulation does not apply to a countback election.

- (2) The election manager is to approve of the returning officer's declaring of the countback election in writing as soon as practicable after the notification of the result.
- (3) The declaration is to be signed by the returning officer and is to state the number of votes recorded for each candidate and the names of the candidate declared elected.
- (4) After the election is declared—
  - (a) the election manager must deliver or send a copy of the written declaration to—
    - (i) the Secretary, and
    - (ii) the Chief Executive Officer of Local Government NSW, and
    - (iii) the relevant general manager, and
    - (iv) for an election administered by an electoral services provider—the Electoral Commissioner, and
  - (b) the general manager of the council must display the written declaration in a conspicuous position at the office of the relevant council.
- (5) The election manager must cause the information in the declaration to be published on the election manager's website for at least one month.

## 10 Application of other provisions

- (1) The following provisions of this Regulation apply to a countback election with all necessary modifications—
  - (a) section 337 (Scrutineers),
  - (a1) section 346 (Persons present at scrutiny and count),
  - (b) section 365 (Obstruction of election officials),
  - (c) section 368 (Persons present in polling place),
  - (d) section 369 (Misconduct by scrutineers),
  - (e) section 370 (Misconduct at polling place or pre-poll voting office).

**Note.** Section 329 (Can the holder of a civic office be dismissed?) of the Act applies to a person holding civic office who has been elected at a countback election.

- (2) For the avoidance of doubt, sections 353 (Recount), 354 (Who pays for the recount?) and 355 (Result of recount) of this Regulation do not apply to a countback election.

## Part 3 Miscellaneous

### 11 Costs

Expenses incurred by the election manager in connection with a countback election are to be met by the council.

## Schedule 10 Constitutional referendums and council polls

(Section 397)

- 1** The following provisions of this Regulation do not apply to constitutional referendums or council polls under Part 3 of Chapter 4 of the Act—

  - (a) Divisions 2 and 4 of Part 11,
  - (b) sections 301–305, 345, 351(1)(b) and (e), 352 and 393–396,
  - (c) Schedules 4–9 and Forms 1–6 in Schedule 11.
- 2** Section 357 of, and Form 15 in Schedule 11 to, this Regulation do not apply to council polls under Part 3 of Chapter 4 of the Act.
- 3** Part 11 of this Regulation, in its application to a constitutional referendum or council poll, is modified as follows—

  - (a) a reference to a ballot-paper is taken to be a reference to a poll-paper,
  - (c) scrutineers are to be appointed not by candidates but by the returning officer at the request of the general manager or mayor of the relevant council, or by the registered officer for a political party registered in the Local Government Register of Political Parties, or by the Electoral Commissioner,
  - (d) a reference in section 353(1) or (2) to a candidate is taken to be a reference to a scrutineer appointed in relation to the referendum or poll,
  - (e) section 353(2)(d) is taken to read as follows—
    - (d) be lodged with the returning officer within 24 hours after the persons present are informed of the result of the count.
  - (g) section 356(2) is taken to be omitted and the following subsection inserted instead—
    - (2) The declaration is to be signed by the returning officer and is to state the question on the poll-paper and the number of “Yes” votes and the number of “No” votes.
  - (i) if the constitutional poll or council poll is not to be held in conjunction with an election of councillors—a reference to the election day is taken to be a reference to the day on which the referendum or poll is held.
- 3A** In the application of Part 11 of this Regulation to a council poll, section 356B(g) is taken to be omitted.
- 4** The following additional provisions apply to constitutional referendums and council polls under Part 3 of Chapter 4 of the Act—

  - (a) if a council resolves to take a constitutional referendum or council poll, the general manager is to notify the Electoral Commissioner of the resolution within 21 days after the council makes the resolution (if the Electoral Commissioner is to administer the referendum or poll),
  - (a1) if a constitutional referendum or council poll is to be held in conjunction with an election of councillors, the general manager must (if he or she has not already done so) notify the Electoral Commissioner of the question to be asked at the referendum or poll no later than 12 noon on the closing date for the election (if the Electoral Commissioner is to administer the referendum or poll and the election),
  - (b) the election manager is to publish a notice setting out the date of the referendum or poll, the question to be asked at the referendum or poll and the locations and times of polling for the referendum or poll—

- (i) on the website of the council, and
  - (ii) in any other manner that the election manager considers necessary to bring it to the attention of members of the public in the area in which a referendum is to be taken, or the area or part of the area in which a poll is to be taken,
- (b1) the election manager is to publish the notice—
  - (i) except as provided by subparagraph (ii)—as soon as practicable after being notified of the date of the referendum or poll, or
  - (ii) in the case of a referendum or poll to be held in conjunction with an election of councillors—at the same time as the election manager publishes a notice under section 300 of this Regulation in relation to the election,
- (c) the poll-paper at a constitutional referendum or council poll is to be in Form 16 in Schedule 11,
- (d) a poll-paper at a constitutional referendum or council poll is informal if—
  - (i) neither the square beside the word “Yes” nor the square beside the word “No” is ticked, or
  - (ii) the poll-paper is not initialled on the front by the returning officer or an election official, or
  - (iii) the poll-paper contains a mark or writing that, in the returning officer’s opinion, would enable the voter to be identified,
- (e) in spite of paragraph (d) a poll-paper is not informal if—
  - (i) neither the square beside the word “Yes” nor the square beside the word “No” is ticked, or
  - (ii) the poll-paper contains an unnecessary mark,  
if, in the opinion of the returning officer, the voter’s intention is clearly indicated on the poll-paper,
- (f) in spite of paragraph (d) a poll-paper is not informal because it is not initialled on the front by the returning officer or an election official if it contains the mark referred to in section 305(2) of this Regulation,
- (g) a poll-paper that is informal is to be rejected at the scrutiny.

## Schedule 11 Forms

### Form 1 Request for omission or removal of place of living from roll (non-resident electors)

(Section 284)

To the General Manager, [*here specify local government area*]

In reference to my enrolment in [*ward*], [*local government area*]

I, [*surname in BLOCK letters*], [*other names in BLOCK letters*]  
of [*full residential address*]

request that \*my residential address/\*the following matter that would disclose or discloses my place of living be omitted or removed from the roll of electors for the abovementioned area (*\*cross out whichever does not apply*)—

[*here specify any other matter that would disclose or discloses the place of living*].

The disclosure of my place of living on those rolls would place or places my personal safety or that of members of my family at risk. The following are particulars of the relevant risk [*state particulars*]—

[*signature of applicant*]

[*date*]

#### Note.

- 1 This request must be verified by statutory declaration by the person making the request or by another person. The form of statutory declaration on the back of this form may be used for this purpose.
- 2 Resident electors who wish to have their address or other matter removed from the electoral roll must make an application to the Australian Electoral Commission or the New South Wales Electoral Commissioner.

#### STATUTORY DECLARATION

I, [*full name in BLOCK letters*], of [*full address*],  
do solemnly and sincerely declare as follows [*make declaration*]—

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the *Oaths Act 1900*.

[*signature of person making the declaration*]

Declared before me at [*place*], [*date*]

Justice of the Peace

#### Certificate under section 34(1)(c) of Oaths Act 1900

*\*Please cross out any text that does not apply*

I [*insert name of witness*], a Justice of the Peace, certify the following matters concerning the making of this statutory declaration by the person who made it—

- 1 \*I saw the face of the person *or* \*I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering.
- 2 \*I have known the person for at least 12 months *or* \*I have confirmed the person's identity using an identification document and the document I relied on was [*describe identification document relied on*].

[*insert signature of witness*]

Date—

### Form 2 Nomination paper: proposal by electors

(Section 289(1)(a))

WE, the undersigned persons enrolled for the election to be held in [*name of ward and area or name of area alone, as appropriate*]

on [*date*], hereby propose for nomination as a candidate at that election for the office of

[*here specify whether as councillor or mayor*]



[full name in BLOCK letters] of [full residential address], [occupation]

[full name of proposer in BLOCK letters]	[full name of proposer in BLOCK letters]
[signature of proposer]	[signature of proposer]
[address of proposer]	[address of proposed]
[date]	[date]

#### FORM OF CONSENT

I, the abovenamed [full name of person proposed for nomination in BLOCK letters] hereby—

- 1 declare that, to the best of my knowledge and belief, \*I was enrolled as an elector for the area on [the closing date for the election]/\*my name has been mistakenly or accidentally omitted from the roll of electors [\*cross out whichever does not apply],
- 2 consent to my being proposed for nomination,
- 3 request that my name should be printed on the ballot-papers for the election in the following form—  
[surname in BLOCK letters, given name in BLOCK letters]
- 4 \*request/\*do not request that the word “Independent” be printed adjacent to my name on the ballot-papers [\*cross out whichever does not apply],
- 5 declare that, to the best of my knowledge and belief, \*I am/\*I am not a property developer (within the meaning of Division 7 of Part 3 of the *Electoral Funding Act 2018*) [\*cross out whichever does not apply].

[signature of person proposed for nomination]

#### Note.

- 1 See the back of this Form [or the attached page] for the provisions of the *Local Government Act 1993* covering qualification and disqualification for a civic office.
- 2 An alternative form of a candidate’s given name may only be—
  - (a) an initial standing for that name, or
  - (b) a commonly accepted variation of the name (including an abbreviation or truncation of that name or an alternative form of that name), or
  - (c) a commonly used other name specific to the candidate by which the candidate is usually identified (if the returning officer is satisfied that the proposed name is a commonly used other name specific to the candidate by which the candidate is usually identified).
- 3 A person must not propose for nomination more than one candidate for election as mayor in the area, or more candidates for election as councillors in the ward or area than the total number of councillors to be elected for that ward or area (eg if five councillors are to be elected for an area, a person must not propose more than five persons for nomination as councillor for that area).
- 4 In item 5, “property developer” (within the meaning of Division 7 of Part 3 of the *Electoral Funding Act 2018*) includes a close associate of a property developer.

#### STATISTICAL INFORMATION SHEET

(Complete this sheet for ordinary elections only, not by-elections)

I, (full name in BLOCK letters)  
of (full residential address),  
declare that—

(tick the squares that apply and insert other information as indicated)

- |     |      |  |                                 |
|-----|------|--|---------------------------------|
| (a) | I am | male <input type="checkbox"/>            | female <input type="checkbox"/> |
| (b) | I am | 18–24 years old <input type="checkbox"/> | <input type="checkbox"/>        |
|     |      | 25–29 years old <input type="checkbox"/> | <input type="checkbox"/>        |
|     |      | 30–39 years old <input type="checkbox"/> | <input type="checkbox"/>        |

- 40–49 years old
- 50–59 years old
- 60–69 years old
- 70–79 years old
- 80 years or older
- (c) I was a candidate at the last ordinary election of the council  
Yes  No
- (d) I was elected at the last ordinary election of the council  
Yes  No
- (e) My experience as a councillor in New South Wales is  
 I have not served as a councillor before  
 I was elected but served less than 1 complete term  
 I completed 1 term  
 I completed 2 terms  
 I completed 3 terms  
 I completed 4 terms  
 I completed 5 terms  
 I completed more than 5 terms (*please specify*) \_\_\_\_\_
- (f) I consider myself to be an Aboriginal person  
Yes  No
- (g) I consider myself to be a Torres Strait Islander person  
Yes  No
- (h) I consider myself to have a disability  
Yes  No
- (i) The first language I learned to speak was  
English   
Arabic   
Cantonese   
Dutch   
German   
Greek   
Italian   
Lebanese   
Mandarin   
Vietnamese   
Other  (*please specify*) \_\_\_\_\_
- (j) My current occupation is  
Professional   
Manager

- |                                |   |
|--------------------------------|---|
| Primary Producer/Farmer        | <input type="checkbox"/>                        |
| Para-Professional/Tradesperson | <input type="checkbox"/>                        |
| Property Developer             | <input type="checkbox"/>                        |
| Clerk                          | <input type="checkbox"/>                        |
| Salesperson                    | <input type="checkbox"/>                        |
| Real Estate Agent              | <input type="checkbox"/>                        |
| Labourer                       | <input type="checkbox"/>                        |
| Plant/Machine Operator         | <input type="checkbox"/>                        |
| Home Duties                    | <input type="checkbox"/>                        |
| Self-employed                  | <input type="checkbox"/>                        |
| Student                        | <input type="checkbox"/>                        |
| Retired                        | <input type="checkbox"/>                        |
| Unemployed                     | <input type="checkbox"/>                        |
| Other                          | <input type="checkbox"/> (please specify) _____ |

(k) I am a member of the following registered political parties (being political parties registered under the *Electoral Act 2017* or under the *Local Government Act 1993*)—

(l) I am a property developer (within the meaning of Division 7 of Part 3 of the *Electoral Funding Act 2018*)

Yes

No

[signature of person proposed for nomination]

**Note.** The information supplied above will be used for statistical purposes only. This information will be treated confidentially. All statistics will be published in aggregate or consolidated form only.

### Form 3 Nomination paper: proposal by registered officer for party

(Section 289(1)(b))

I, the person whose name appears on this form as the registered officer for the political party (registered in the Local Government Register of Political Parties) that has endorsed the person proposed for nomination, hereby propose for nomination [*here state name in full in BLOCK letters, occupation and full residential address of the person proposed for nomination*] as a candidate at the election to be held in [*name of ward and area or name of area alone, as appropriate*] on [*date*] for the office of [*here specify whether as councillor or mayor*].

I request that the \*registered name/\*abbreviated name of the party be printed adjacent to the candidate's name on the ballot-papers [*\*cross out whichever does not apply*].

Dated

**Name in full of registered officer**

**Name of political party**

**Signature of registered officer**

FORM OF CONSENT

I, the abovenamed [*full name of person proposed for nomination in BLOCK letters*],  
hereby—

- 1 declare that, to the best of my knowledge and belief, \*I was enrolled as an elector for the area on [*the closing date for the election*]/\*my name has been mistakenly or accidentally omitted from the roll of electors [*\*cross out whichever does not apply*],
- 2 consent to my being proposed for nomination,
- 3 request that my name should be printed on the ballot-papers for the election in the following form—  
[*surname in BLOCK letters, given name in BLOCK letters*]
- 4 declare that, to the best of my knowledge and belief, \*I am/\*I am not a property developer (within the meaning of Division 7 of Part 3 of the *Electoral Funding Act 2018*) [*\*cross out whichever does not apply*].

[*signature of person proposed for nomination*]

**Note.**

- 1 See the back of this Form [or the attached page] for the provisions of the *Local Government Act 1993* covering qualification and disqualification for a civic office.
- 2 An alternative form of a candidate's given name may only be—
  - (a) an initial standing for that name, or
  - (b) a commonly accepted variation of the name (including an abbreviation or truncation of that name or an alternative form of that name), or
  - (c) a commonly used other name specific to the candidate by which the candidate is usually identified (if the returning officer is satisfied that the proposed name is a commonly used other name specific to the candidate by which the candidate is usually identified).
- 3 In item 4, "property developer" (within the meaning of Division 7 of Part 3 of the *Electoral Funding Act 2018*) includes a close associate of a property developer.

### STATISTICAL INFORMATION SHEET

(*Complete this sheet for ordinary elections only, not by-elections*)

I, (*full name in BLOCK letters*)  
of (*full residential address*),  
declare that—

(*tick the squares that apply and insert other information as indicated*)

- |     |  |  |                                 |
|-----|--|--|---------------------------------|
| (a) | I am   | male <input type="checkbox"/>              | female <input type="checkbox"/> |
| (b) | I am   | 18–24 years old <input type="checkbox"/>   | <input type="checkbox"/>        |
|     |  | 25–29 years old <input type="checkbox"/>   | <input type="checkbox"/>        |
|     |  | 30–39 years old <input type="checkbox"/>   | <input type="checkbox"/>        |
|     |  | 40–49 years old <input type="checkbox"/>   | <input type="checkbox"/>        |
|     |  | 50–59 years old <input type="checkbox"/>   | <input type="checkbox"/>        |
|     |  | 60–69 years old <input type="checkbox"/>   | <input type="checkbox"/>        |
|     |  | 70–79 years old <input type="checkbox"/>   | <input type="checkbox"/>        |
|     |  | 80 years or older <input type="checkbox"/> | <input type="checkbox"/>        |
| (c) | I was a candidate at the last ordinary election of the council | Yes <input type="checkbox"/>               | No <input type="checkbox"/>     |
| (d) | I was elected at the last ordinary election of the council     | Yes <input type="checkbox"/>               | No <input type="checkbox"/>     |

- (e) My experience as a councillor in New South Wales is
- I have not served as a councillor before
  - I was elected but served less than 1 complete term
  - I completed 1 term
  - I completed 2 terms
  - I completed 3 terms
  - I completed 4 terms
  - I completed 5 terms
  - I completed more than 5 terms (*please specify*) \_\_\_\_\_
- (f) I consider myself to be an Aboriginal person
- Yes  No
- (g) I consider myself to be a Torres Strait Islander person
- Yes  No
- (h) I consider myself to have a disability
- Yes  No
- (i) The first language I learned to speak was
- English
  - Arabic
  - Cantonese
  - Dutch
  - German
  - Greek
  - Italian
  - Lebanese
  - Mandarin
  - Vietnamese
  - Other  (*please specify*) \_\_\_\_\_
- (j) My current occupation is
- Professional
  - Manager
  - Primary Producer/Farmer
  - Para-Professional/Tradesperson
  - Property Developer
  - Clerk
  - Salesperson
  - Real Estate Agent
  - Labourer
  - Plant/Machine Operator

- Home Duties
- Self-employed
- Student
- Retired
- Unemployed
- Other  (please specify) \_\_\_\_\_

(k) I am a member of the following registered political parties (being political parties registered under the *Electoral Act 2017* or under the *Local Government Act 1993*)—

(l) I am a property developer (within the meaning of Division 7 of Part 3 of the *Electoral Funding Act 2018*)

Yes

No

[signature of person proposed for nomination]

**Note.** The information supplied above will be used for statistical purposes only. This information will be treated confidentially. All statistics will be published in aggregate or consolidated form only.

## Form 4 Ballot-paper

(Section 305(8))

[insert name of ward if applicable]

[insert name of area]

Election of [here insert the number of vacancies that the election is being held to fill and whether the election is of councillors or of the mayor] held on [insert election day].

### Candidates

[If the returning officer has accepted an application to print the name of a political party or the word "Independent" adjacent to the name of a candidate, the name or word must be printed there.]

VALADON, Susan

(Blackacre)

ARRAIZA, Ramon

VALADON, Sue

(Tenterfield)

BROWN, Denise

KABOS, Colin

DAVIS, Ron

(Storekeeper, Tenterfield)

DAVIS, Ron

(Grazier, Tenterfield)

HO, Liam

MAHON, Sharon

WHITMORE, Kim

[The following directions are to appear on the front or the back of the ballot-paper. If the directions appear on the back of the ballot-paper, an appropriate reference to their appearance on the back must be made on the front of the ballot-paper.]

### Directions for Voting

[Here insert the following directions if 1 or 2 candidates are to be elected]

Place the number "1" in the square next to the candidate of your choice.

If you wish to vote for any more candidates, place consecutive numbers starting with "2" in the squares next to those candidates in order of your preferences for them. [This second direction should only be inserted if there are more than 2 candidates]

*[Here insert the following directions if 3 or more candidates are to be elected]*

Place the numbers *[here insert the sequence of numbers that corresponds to half the number of candidates to be elected]* in the squares next to the *[here insert half the number of candidates to be elected]* candidates in order of your preferences for them.

If you wish to vote for any more candidates, place consecutive numbers starting with *[here insert the next number after half the number of the candidates to be elected]* in the squares next to those candidates in order of your preferences for them. *[Where half the number to be elected is a fraction it is to be rounded up to the next integer]*

ELECTORS PLEASE NOTE: YOU MUST NOT TAKE A BALLOT-PAPER OUT OF THE POLLING PLACE.

## Form 5 Ballot-paper

(Section 305(8))

*[insert name of ward if applicable]*

*[insert name of area]*

Election of *[here insert the number of vacancies that the election is being held to fill]* councillors held on *[insert election day]*

### Candidates

#### GROUP A

VALADON,  
Susan  
(Blackacre)  
\*

ARRAIZA,  
Ramon  
\*

VALADON,  
Sue  
(Tenterfield)  
\*

#### GROUP B

BROWN,  
Denise  
\*\*

KABOS,  
Colin  
\*\*

#### GROUP C

DAVIS,  
Ronald  
(Storekeeper,  
Tenterfield)  
\*

DAVIS,  
Ronald  
(Grazier,  
Tenterfield)  
\*

HO,  
Liam  
\*

MAHON  
Sharon  
\*\*\*

WHITMORE,  
Terence  
\*\*\*

\* Here insert name of registered party if to be printed.

\*\* Here insert the word "Independent" if to be printed.

\*\*\* Here insert name of registered party or word "Independent" if to be printed.

*[The following directions are to appear on the front or the back of the ballot-paper. If the directions appear on the back of the ballot-paper, an appropriate reference to their appearance on the back must be made on the front of the ballot-paper.]*

### Directions for Voting

Place the numbers *[here insert the sequence of numbers that corresponds to half the number of candidates to be elected]* in the squares next to the *[here insert half the number of candidates to be elected]* candidates in order of your preferences for them.

If you wish to vote for any more candidates, place consecutive numbers starting with *(here insert the next number after half the number of the candidates to be elected)* in the squares next to those candidates in order

of your preferences for them. *[Where half the number to be elected is a fraction it is to be rounded up to the next integer]*

ELECTORS PLEASE NOTE: YOU MUST NOT TAKE A BALLOT-PAPER OUT OF THE POLLING PLACE.

## Form 6 Ballot-paper

(Section 305(8))

*[insert name of ward if applicable]*

*[insert name of area]*

Election of *[here insert the number of vacancies which the election is being held to fill]* councillors held on *[insert election day]*.

*[Where half the number to be elected is a fraction it is to be rounded up to the next integer]*

ELECTORS PLEASE NOTE: YOU MUST NOT TAKE A BALLOT-PAPER OUT OF THE POLLING PLACE.

## Form 15 Penalty notice—Failure to vote

(Section 357)

**Area**

**Ward**

**No on Roll**

---

*[Name and address]*

The Electoral Commission's records indicate that you appear to have failed to vote at the election/constitutional referendum held on *[date]*

The maximum penalty for failing to vote is *[insert maximum amount of penalty]*.

IF YOU DID VOTE—

Please complete and sign the following declaration.

I declare that I did vote at *[polling place]*

in respect of the election/constitutional referendum held on *[date]*

*[signature]*

IF YOU DID NOT VOTE—

1 If you think you have a sufficient reason for not voting, please complete and sign the following declaration—

I declare that I did not vote at the election/constitutional referendum held on *[date]* for the following reason—

*[signature]*

2 If you do not think you have a sufficient reason for not voting, you may dispose of the matter by—

- paying a penalty of *[insert amount of penalty]* to the Electoral Commission within 28 days of the date of this notice

OR



- having the matter dealt with by a court, where the maximum penalty is [*insert maximum amount of penalty*] and you may also have to pay court costs.

IF A DECLARATION OF VOTING IS NOT MADE, A REASON FOR NOT VOTING IS NOT GIVEN AND THE PENALTY IS NOT PAID WITHIN 28 DAYS, PROCEEDINGS MAY BE TAKEN AGAINST YOU IN COURT.

**PROCEDURE FOR PAYMENT OF PENALTY OR OFFER OF EXPLANATION**

Deliver or send the penalty or the explanation to the Electoral Commission at [*address of Electoral Commission's Office*]

Cheques and money orders should be crossed, marked not negotiable and made payable to the Electoral Commission.

DO NOT SEND CASH. PART PAYMENT OF THIS PENALTY CANNOT BE ACCEPTED.

The PENALTY for any person making a false statement in this Form is [*insert maximum amount of penalty*].

THIS FORM MUST BE DELIVERED OR SENT WITH YOUR PAYMENT OR EXPLANATION  
Electoral Commission

TICK IF RECEIPT IS REQUIRED

[*date*]

**Form 16 Constitutional referendum or council poll paper**

Schedule 10, section 4

[*local government area*]

Constitutional referendum/council poll taken on [*date*]

Directions—

The question below requires a “Yes” or “No” answer.

If you decide to answer “Yes” to the question, place a tick in the square next to the word “Yes”.

If you decide to answer “No” to the question, place a tick in the square next to the word “No”.

Question—

[*here set out question*]

Yes

No

## Schedule 12 Penalty notice offences

(Sections 398 and 399)

Column 1	Column 2
Offence under Local Government Act 1993	Penalty
Section 626(3)—carry out without prior approval of council an activity specified in item 4 of Part C (Management of waste) of the Table to section 68	\$330
Section 626(3)—carry out without prior approval of council an activity specified in item 6 of Part C (Management of waste) of the Table to section 68	\$330
Section 626(3)—carry out without prior approval of council an activity specified in item 1 of Part D (Community land) of the Table to section 68	\$220
Section 626(3)—carry out without prior approval of council an activity specified in item 2 of Part D (Community land) of the Table to section 68	\$220
Section 626(3)—carry out without prior approval of council an activity specified in item 3 of Part D (Community land) of the Table to section 68	\$220
Section 626(3)—carry out without prior approval of council an activity specified in item 4 of Part D (Community land) of the Table to section 68	\$220
Section 626(3)—carry out without prior approval of council an activity specified in item 5 of Part D (Community land) of the Table to section 68	\$220
Section 626(3)—carry out without prior approval of council an activity specified in item 6 of Part D (Community land) of the Table to section 68	\$220
Section 626(3)—carry out without prior approval of council an activity specified in item 1 of Part E (Public roads) of the Table to section 68	\$330
Section 626(3)—carry out without prior approval of council an activity specified in item 2 of Part E (Public roads) of the Table to section 68	\$330
Section 626(3)—carry out without prior approval of council an activity specified in item 7 of Part F (Other activities) of the Table to section 68	\$220
Section 626(3)—carry out without prior approval of council an activity (being domestic greywater diversion) as prescribed by the regulations under item 10 of Part F (Other activities) of the Table to section 68	\$220
Section 627(3)—having obtained the council’s approval to the carrying out of an activity specified in item 4 of Part C (Management of waste) of the Table to section 68, carry out the activity otherwise than in accordance with the terms of that approval	\$330
Section 627(3)—having obtained the council’s approval to the carrying out of an activity specified in item 6 of Part C (Management of waste) of the Table to section 68, carry out the activity otherwise than in accordance with the terms of that approval	\$330
Section 627(3)—having obtained the council’s approval to the carrying out of an activity specified in item 1 of Part D (Community land) of the Table to section 68, carry out the activity otherwise than in accordance with the terms of that approval	\$110
Section 627(3)—having obtained the council’s approval to the carrying out of an activity specified in item 2 of Part D (Community land) of the Table to section 68, carry out the activity otherwise than in accordance with the terms of that approval	\$110
Section 627(3)—having obtained the council’s approval to the carrying out of an activity specified in item 3 of Part D (Community land) of the Table to section 68, carry out the activity otherwise than in accordance with the terms of that approval	\$110

<b>Column 1</b>	<b>Column 2</b>
<b>Offence under Local Government Act 1993</b>	<b>Penalty</b>
Section 627(3)—having obtained the council’s approval to the carrying out of an activity specified in item 4 of Part D (Community land) of the Table to section 68, carry out the activity otherwise than in accordance with the terms of that approval	\$110
Section 627(3)—having obtained the council’s approval to the carrying out of an activity specified in item 5 of Part D (Community land) of the Table to section 68, carry out the activity otherwise than in accordance with the terms of that approval	\$110
Section 627(3)—having obtained the council’s approval to the carrying out of an activity specified in item 6 of Part D (Community land) of the Table to section 68, carry out the activity otherwise than in accordance with the terms of that approval	\$110
Section 627(3)—having obtained the council’s approval to the carrying out of an activity specified in item 1 of Part E (Public roads) of the Table to section 68, carry out the activity otherwise than in accordance with the terms of that approval	\$220
Section 627(3)—having obtained the council’s approval to the carrying out of an activity specified in item 2 of Part E (Public roads) of the Table to section 68, carry out the activity otherwise than in accordance with the terms of that approval	\$220
Section 627(3)—having obtained the council’s approval to the carrying out of an activity specified in item 7 of Part F (Other activities) of the Table to section 68, carry out the activity otherwise than in accordance with the terms of that approval	\$110
Section 627(3)—having obtained the council’s approval to the carrying out of an activity (being domestic greywater diversion) as prescribed by the regulations under item 10 of Part F (Other activities) of the Table to section 68, carry out the activity otherwise than in accordance with the terms of that approval	\$220
Section 628(1)—fail to comply with an order given in terms of order No 7 in the Table to section 124	\$330
Section 628(1)—fail to comply with an order given in terms of order No 8 in the Table to section 124	\$110
Section 628(1)—fail to comply with an order given in terms of order No 10 in the Table to section 124	\$330
Section 628(2)—fail to comply with an order given in terms of order No 18 in the Table to section 124	\$220
Section 628(2)—fail to comply with an order given in terms of order No 19 in the Table to section 124	\$220
Section 628(2)—fail to comply with an order given in terms of order No 20 in the Table to section 124	\$330
Section 628(2)—fail to comply with an order given in terms of order No 21 in the Table to section 124	\$330
Section 628(2)—fail to comply with an order given in terms of order No 22 in the Table to section 124	\$330
Section 628(2)—fail to comply with an order given in terms of order No 23 in the Table to section 124 (To connect premises to the council’s water supply by a specified date)	\$330
Section 628(2)—fail to comply with an order given in terms of order No 24 in the Table to section 124	\$330
Section 628(2)—fail to comply with an order given in terms of order No 25 in the Table to section 124	\$330
Section 628(2)—fail to comply with an order given in terms of order No 27 in the Table to section 124	\$220

<b>Column 1</b>	<b>Column 2</b>
<b>Offence under Local Government Act 1993</b>	<b>Penalty</b>
Section 628(3)—fail to comply with an order given in terms of order No 30 in the Table to section 124 (To comply with an approval concerning an activity specified in Part D (Community land) of the Table to section 68)	\$110
Section 628(3)—fail to comply with an order given in terms of order No 30 in the Table to section 124 (To comply with an approval concerning an activity specified in Part E (Public roads) of the Table to section 68)	\$220
Section 628(3)—fail to comply with an order given in terms of order No 30 in the Table to section 124 (To comply with an approval concerning an activity specified in Part F (Other activities) of the Table to section 68: Use a standing vehicle or any article for the purpose of selling any article in a public place)	\$110
Section 629(2)—remove any plant or animal from a public place	\$220
Section 630(1)—without lawful excuse, break a bottle, glass, glass receptacle or syringe in a public place	\$220
Section 630(2)—throw, place, leave in a public place any bottle, glass, glass receptacle, syringe, broken glass or other matter or thing likely to endanger the safety of or cause injury to any person or animal or damage to any vehicle or property	\$220
Section 630(3)—break a bottle, glass, syringe or glass receptacle in a public bathing place under the control of the council, and not collect and remove all portions of the bottle, glass, syringe or glass receptacle either to a receptacle (if any) provided by the council for that purpose, or to a place beyond the public bathing place	\$220
Section 631—in a public bathing place under the control of the council, do any act that damages, defaces or pollutes the public bathing place or that is likely to damage, deface or pollute the public bathing place or anything relating to the public bathing place	\$220
Section 632(1)—in a public place within the area of a council, fail to comply with the terms of a notice erected by the council	\$110
Section 633(1)—in a place being—	
(a) a public bathing place under the control of a council,	\$75
(b) a river, watercourse or tidal or non-tidal water,	\$75
(c) the sea adjacent to (although outside) an area,	\$75
(d) a public place adjacent to any of those places,	\$110
fail to comply with the terms of a notice erected by the council	
Section 633(2)—be in the nude in public view in a place (unless a notice erected by the council allows the use of the place (or part of the place) for the purposes of nude bathing) being—	
(a) a public bathing place under the control of a council,	\$110
(b) a river, watercourse or tidal or non-tidal water,	\$110
(c) the sea adjacent to (although outside) an area,	\$110
(d) a public place adjacent to any of those places	\$110
Section 637(1)—wilfully or negligently wasting or misusing water from a public water supply	\$220
Section 651B(1)—immobilise a vehicle owned by another person by means of wheel clamps, or a prescribed device, except with the consent of the owner	\$300
Section 651C(1)(a)—fail to release a vehicle on demand to any person having a lawful right to the possession or control of the vehicle	\$300

<b>Column 1</b>	<b>Column 2</b>
<b>Offence under Local Government Act 1993</b>	<b>Penalty</b>
Section 651C(1)(b)—demand payment for or in relation to the release of a vehicle	\$300
<b>Offences under City of Sydney Act 1988</b>	<b>Penalty</b>
Section 18D(7)	\$220