

# Local Government (General) Regulation 2005

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New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**
  - [Miscellaneous Acts Amendment \(Same Sex Relationships\) Act 2008 No 23](#) (not commenced)
  - [Environmental Planning and Assessment Amendment Act 2008 No 36](#) (not commenced)
  - [Election Funding Amendment \(Political Donations and Expenditure\) Act 2008 No 43](#) (not commenced)
- **See also**
  - [Contaminated Land Management Amendment Bill 2008](#)

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Local Government (General) Regulation 2005



New South Wales

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# Local Government (General) Regulation 2005



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Local Government (General) Regulation 2005*.

### 2 Commencement

This Regulation commences on 1 September 2005.

#### Note—

This Regulation is a consolidation of nine Regulations under the *Local Government Act 1993*, each of which is repealed on 1 September 2005 by section 10 (2) of the *Subordinate Legislation Act 1989*.

### 3 Definitions

(1) In this Regulation:

**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.

**comprehensive state of the environment report** means a council's comprehensive report as to the state of the environment referred to in section 403 (2) of the Act.

**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 Energy, Utilities and Sustainability in March 2005, 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](#).

**Manual of Authorization Procedures** means the *Manual of authorization procedures for plumbing and drainage products* (MP 52-2005) published by Standards Australia.

**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 and Drainage Code of Practice** means the *New South Wales Code of Practice—Plumbing and Drainage* produced by the Committee on Uniformity of Plumbing and Drainage Regulations in New South Wales, 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* issued by the Department 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.

**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.

**state of the environment report** means a report as to the state of the environment referred to in section 428 (2) (c) of the Act.

**supplementary state of the environment report** means a state of the environment report that is not a comprehensive state of the environment report.

**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.

(2), (3) (Repealed)

(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.

## **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 2005](#).

### **Division 2**

#### **6-12 (Repealed)**

### **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 clause 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 clause 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 to be subject to a condition requiring compliance with standards and requirements**

It is a condition of an approval allowing water supply, sewerage or 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.*

**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**

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 and Drainage Code of Practice.

**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 Utilities 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 and Drainage Code of Practice 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.

### **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.

## **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 clause.
- (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 clause 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 the Roads and Traffic Authority.

**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 Director-General of the Department of Energy, Utilities and Sustainability 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 clause.
- (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 Director-General in relation to the matters referred to in

subclause (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 clause 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 Director-General for the purposes of this clause.
- (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 Director-General of the Department of Health for the purposes of this clause.

#### **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 Director-General of the Department of Health, being a certificate that is in force.
- (2) Subclause (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 subclause (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 Director-General in relation to the environment and health protection matters referred to in clause 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 subclause (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 clause 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 Director-



General of the Department 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 registered under the [Road Transport \(Vehicle Registration\) Act 1997](#) that 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 registered under the [Road Transport \(Vehicle Registration\) Act 1997](#) that is used primarily for road transport.

## **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 1 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 Roads and Traffic Authority's views 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 *Occupational Health and Safety Act 2000*, 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 the Roads and Traffic Authority, given having regard to its functions under the road transport legislation (within the meaning of the *Road Transport (General) Act 1999* or, after the repeal of that Act, the *Road Transport (General) Act 2005*) and the *Roads Act 1993*. The Authority 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 clause, **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 clause:

**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 clause:
  - (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 Director-General 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 4A 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 *Occupational Health and Safety Regulation 2001* may be installed or operated without the prior approval of the council.

**Note—**

See the Table to clause 113 of the *Occupational Health and Safety Regulation 2001* for the 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 *Occupational Health and Safety Regulation 2001*, 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 within the meaning of Chapter 5 of that Regulation, and
- (e) that there is in force a contract of insurance or indemnity for the device that complies with clause 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 *Occupational Health and Safety Regulation 2001*,
- (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 clause, ***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 *Occupational Health and Safety Regulation 2001*, 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 within the meaning of Chapter 5 of that Regulation, 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 clause 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 and Drainage Code of Practice, 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 subclause (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 clause:

**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 in at least one local newspaper circulating at least once weekly in the area, and
- (b) be so published on at least 2 separate occasions, the first occasion being not more than 7 days before the commencement of the public exhibition of the draft local policy and the second occasion being at least 7 days but not more than 14 days before 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 in at least one local newspaper circulating at least once weekly 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 to the effect that a record of the approval is available for inspection, without charge, at the office of the council during its ordinary office hours.

## **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 clauses 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, subclauses (1) and (2) do not apply to the activity.

(4) Subclause (3) does not prevent a local approvals policy from specifying compliance with one or more of the standards referred to in subclause (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 2005* 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 places of shared accommodation

For the purposes of Order No 5 (d) in its operation as to 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*), 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**

Without limiting Order No 5 (h), and except in the case of a defect to which clause 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.

#### **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 Consumer, Trader and Tenancy 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 subclause (3) is made in respect of the defective work.

#### **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 the 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 the subject of a contaminated land action, 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 clause:

**contaminated land action** means a current action under the [Contaminated Land Management Act 1997](#) comprising:

- (a) a declaration or order made under Part 3 of that Act in respect of which the EPA has notified the council under section 59 of that Act, or
- (b) a voluntary proposal in respect of which the EPA has notified the council under section 59 of that Act, but which has not yet been fully carried out, or
- (c) a notice to maintain remediation action issued by the EPA under section 28 of that Act, or
- (d) a covenant to maintain remediation imposed by the EPA under section 29 of that Act.

**EPA** means the Environment Protection Authority constituted by the [Protection of the Environment Administration Act 1991](#).

**Note—**

Section 7 (2) of the [Protection of the Environment Operations Act 1997](#) provides that that Act prevails over any other Act or statutory rule to the extent of any inconsistency and that a regulation under that Act prevails 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 another 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 in at least one local newspaper circulating at least once weekly in the area, and
- (b) be so published on at least 2 separate occasions, the first occasion being not more than 7 days before the commencement of the public exhibition of the draft local policy and the second occasion being at least 7 days but not more than 14 days before 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—**

Section 36A of the Act provides that community land that has been declared a critical habitat under the *Threatened Species Conservation Act 1995* or the *Fisheries Management Act 1994* must be categorised as a natural area.

Section 36B of the Act provides that community land all or part of which is directly affected by a recovery plan or threat abatement plan under the *Threatened Species Conservation Act 1995* or the *Fisheries Management Act 1994* 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 clauses 102–105 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, sedgeland, 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, including land that is protected land for the purposes of the *Rivers and Foreshores Improvement Act 1948* or State protected land identified in an order under section 7 of the *Native Vegetation Conservation Act 1997*.

#### **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 clause 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 Director-General of the Department of Aboriginal Affairs,
    - (v) the Director-General of the Department of Environment and Conservation, and
  - (b) placing an advertisement in a newspaper circulating across the State that is primarily concerned with issues of interest to Aboriginal people, 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 clause 105 (a)) must not make a final determination on that matter unless the council has considered any submissions made under this clause 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 clause 105 (a)) unless the council has called for and considered any submissions made under this clause 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 clause 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 clause 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.

**115 Application of amendments made by [Local Government Amendment Act 2000](#) to draft plans of management**

The amendments made to sections 40 and 40A of the Act by Schedule 3 [4]-[6] to the [Local Government Amendment Act 2000](#) do not apply to proposed plans of management amended or adopted after the commencement of those amendments that had been placed on exhibition before the commencement of the amendments.

## **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 subclause (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 clause, **existing road or fire trail** means a road or a fire trail that was in existence on 1 January 2001 (the date on which the *Local Government (General) Amendment (Community Land) Regulation 2000* commenced).

**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 clause 116 (3) or (4).
- (2) However, the use or occupation of community land for events listed in subclause (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 clause 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 Director-General of the Department of Environment and Conservation.
- (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) an advertisement is to be placed in a newspaper circulating across the State that is primarily concerned with issues of interest to Aboriginal people.
- (4) A notice and an advertisement required by this clause 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**

### **120A Rating of irrigable land the subject of certain post-1.7.05 supplementary valuations**

- (1) This clause applies to such part of any area as comprises land:
  - (a) that is categorised as farmland for the purposes of Part 3 of Chapter 15 of the Act, and
  - (b) that is the subject of a water right within the meaning of the *Valuation of Land Act 1916*, and
  - (c) that, since 1 July 2005, has been the subject of a supplementary valuation under that Act,unless the council has, by resolution, determined that this clause is not to apply to its area.
- (2) Land to which this clause applies is exempt from the provisions of section 498 of the Act to the extent to which that section requires the ad valorem amount of an ordinary rate to apply to the current land value of the land.
- (3) Instead, section 498 of the Act applies to any such land as if that section required the ad valorem amount of an ordinary rate to apply to the land value of the land as it was immediately before the land became the subject of the supplementary valuation referred to in subclause (1) (b).
- (4) If the supplementary valuation has arisen from a subdivision of land, the land value of each parcel of land arising from the subdivision is taken to be an amount that bears the same proportion to the land value of the unsubdivided land, as it was immediately before the subdivision, as the area of that parcel bears to the area of the unsubdivided land.

### **120B Matters to which council may have regard in sub-categorising irrigable land**

For the purpose of determining sub-categories of farmland, as referred to in section 529 of the Act, a council may have regard to any differences in the reduction of land values of irrigable land that have arisen as a consequence of the commencement of section 6A (4) of the *Valuation of Land Act 1916*.

### **120C Transitional nature of clauses 120A and 120B**

- (1) Clauses 120A and 120B are transitional provisions consequent on the enactment of the *Local Government and Valuation of Land Amendment (Water Rights) Act 2005*.
- (2) Clause 120A does not apply to a council in respect of any year following the first

occasion after 1 July 2007 that the Valuer-General gives a valuation list to the council following a general valuation carried out in respect of the council's area.

- (3) Clause 120B does not apply to a council in respect of any year following the second occasion after 1 July 2007 that the Valuer-General gives a valuation list to the council following a general valuation carried out in respect of the council's area.

**121 Land used for caravan park or manufactured home not to be categorised as residential (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 (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 Homebush Bay area exempt from rates (section 556)**

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) is exempt from all rates, except water supply special rates and sewerage special rates.

**124 Museum of Contemporary Art exempt from rates (section 556)**

All land occupied by the Museum of Contemporary Art Limited is exempt from all rates, except water supply special rates and sewerage special rates.

**125 Services for which an annual charge may be imposed (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 clause, **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 clause:

***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 clause 125AA.

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

#### **125AA Maximum annual charge for stormwater management services**

For the purposes of section 510A of the Act, 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—\$25, and
- (b) for land categorised as business—\$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.

#### **126 Minimum amounts of rates**

For the purposes of section 548 (3) (a) of the Act, the amount prescribed is \$392.

## **127 Rates and charges notices**

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).

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

A council must, if required to do so by the Minister or the Director-General, furnish information to the Minister or the Director-General, 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 (section 607)**

The council may write off rates and charges and interest accrued on unpaid rates and charges if an amount of an increase to a rate is subsequently reduced as a consequence of clause 84 of Schedule 8 to the Act.

##### **Note—**

Clause 84 of Schedule 8 is concerned with ordinary rates levied for the year commencing 1 July 2005 and each of the subsequent four years. It provides that, in general, the amount that may be levied as an ordinary rate for any parcel of land in the category "farmland" (or any sub-category of that category) must not be more than 20%

above the amount levied as an ordinary rate for that parcel for the previous year.

### **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 subclause (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 clause 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 clause 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) the widow or widower of a member of the Australian Defence or Peacekeeping Forces, or
  - (ii) the unmarried mother of a deceased unmarried member of either of those Forces, or
  - (iii) the widowed mother of a deceased unmarried member of either of those 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),
- (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.



### **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 Director-General.

### **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 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 clause, 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 clause, place the same sort of restrictions as are referred to in subclause (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 clause 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 clause can be imposed only by a notice of the council

published in a newspaper circulating within the council's area.

- (5) All agreements made by the council relating to the supply of water are subject to this clause.
- (6) This clause does not authorise the council to make orders restricting persons' rights under the *Water Act 1912* or the *Water Management Act 2000*.

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

- (1) The Minister for Utilities 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 Utilities of the matters referred to in subclause (1) (b)-(d).
- (3) If the Minister for Utilities 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.

### **140 Flood retarding basins**

A work that is, or will when completed be, a prescribed dam for the purposes of the *Dams Safety Act 1978* is prescribed as a flood retarding basin for the purposes of section 60 (d) of the Act.

## **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 subclause 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 quantity of sewage discharged from, premises, and
- (d) measure the quantity of water supplied to, or the quantity of sewage discharged from, premises.

(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 quantity of sewage actually discharged from, the premises.

#### **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 clause 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 subclause (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 clause 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 Utilities 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**

Water supply work, sewerage work and 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 subclause (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 and Drainage Code of Practice.

- (2) However, a person does not contravene subclause (1) only by laying a house service pipe at a depth less than that required by the Plumbing and Drainage Code of Practice 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 clause 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) Subclause (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 3 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 clause, ***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 subclause (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) For the purposes of the first bullet point paragraph of section 55 (3) of the Act, Local Government Procurement Partnership (ABN 34 578 553 267) is prescribed.
- (1B) To avoid doubt, a reference to Local Government Procurement Partnership includes for the purposes of subclause (1A) a reference to any duly appointed agent of Local Government Procurement Partnership.
- (2) For the purposes of the final bullet point paragraph of section 55 (3) of the Act, section 55 does not apply to a contract involving an estimated expenditure or receipt of an amount of less than \$150,000.

#### 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.

**relevant newspapers**, in relation to a council, means:

- (a) a Sydney metropolitan daily newspaper, and
- (b) either or both of the following:
  - (i) a newspaper circulating in the council's area,
  - (ii) a newspaper circulating in the district where potential tenderers are likely to be carrying on business or to be residing.

**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 in the relevant newspapers inviting tenders 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 clause 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 use the selective tendering method referred to in clause 166 (b) for allocating a particular proposed contract must publish in the relevant newspapers an advertisement inviting applications from persons 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 clause 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 use the selective tendering method referred to in clause 166 (c) for the allocation of proposed contracts of a specified kind must publish in the relevant newspapers an advertisement inviting applications from persons interested in tendering for proposed contracts of that kind so that the council may prepare a list of suitable tenderers.
- (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 clause, 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 clause 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 clause, 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 clause 170.
- (8) As an alternative to listing persons as recognised contractors in accordance with subclauses (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 subclause (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 clause.
- (11) Nothing in this clause requires a council to take the action referred to in subclause (1) on each occasion that it decides to invite tenders under this clause.

### **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.

- (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.

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

- (1) A council that believes there are exceptional circumstances rendering inappropriate a deadline that would, but for this clause, be required to be specified in an advertisement under clause 167, 168 or 169 or an invitation under clause 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 clause 167, 168 or 169 or an invitation under clause 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 clause 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 subclause (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 subclause (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 clause 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 clause 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 subclause (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 clause, 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 clause 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 subclause is subject to subclauses (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 subclause (3)), the council is not obliged to consider a tender transmitted to it in accordance with that subclause (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.
- (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 clause 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 clause 167, 168 or 169, fresh tenders based on the same or different details,
  - (c) invite, in accordance with clause 168, fresh applications from persons interested in tendering for the proposed contract,
  - (d) invite, in accordance with clause 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 subclause (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 subclause (3) (b)-(d),
- (b) the council's reasons for determining to enter into negotiations with the person or persons referred to in subclause (3) (e).

### **179 Notification of acceptance of successful tender**

As soon as practicable after entering into a contract in accordance with clause 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 Honesty and disclosure of interests**

### **Division 1 Preliminary**

#### **180 Definitions**

In this Part and Schedule 3:

**address** means:

- (a) in relation to a person other than a corporation, the last residential or business address of the person known to the councillor or designated person disclosing the address, or
- (b) in relation to a corporation, the address of the registered office of the corporation in New South Wales or, if there is no such office, the address of the principal office of the corporation in the place where it is registered, or
- (c) in relation to any real property, the postal address of the property or particulars of title of the property.

**disposition of property** means a conveyance, transfer, assignment, settlement, delivery, payment or other alienation of property, including the following:

- (a) the allotment of shares in a company,
- (b) the creation of a trust in respect of property,
- (c) the grant or creation of a lease, mortgage, charge, easement, licence, power, partnership or interest in respect of property,

- (d) the release, discharge, surrender, forfeiture or abandonment, at law or in equity, of a debt, contract or chose in action, or of an interest in respect of property,
- (e) the exercise by a person of a general power of appointment over property in favour of another person,
- (f) a transaction entered into by a person who intends by the transaction to diminish, directly or indirectly, the value of the person's own property and to increase the value of the property of another person.

**gift** means a disposition of property made otherwise than by will (whether or not by instrument in writing) without consideration, or with inadequate consideration, in money or money's worth passing from the person to whom the disposition was made to the person who made the disposition, but does not include a financial or other contribution to travel.

**interest** means:

- (a) in relation to property—an estate, interest, right or power, at law or in equity, in or over the property, or
- (b) in relation to a corporation—a relevant interest (within the meaning of section 9 of the [Corporations Act 2001](#) of the Commonwealth) in securities issued or made available by the corporation.

**listed company** means a company that is listed within the meaning of section 9 of the [Corporations Act 2001](#) of the Commonwealth.

**occupation** includes trade, profession and vocation.

**professional or business association** means an incorporated or unincorporated body or organisation having as one of its objects or activities the promotion of the economic interests of its members in any occupation.

**property** includes money.

**travel** includes accommodation incidental to a journey.

### **181 Return dates and periods**

- (1) A reference in this Part or in Schedule 3 to the return date for a return made by a person under section 449 (1) of the Act is a reference to the date on which the person became the holder of a position required to make such a return.
- (2) A reference in this Part or in Schedule 3 to the return period for a return by a person under section 449 (3) of the Act in a particular year is a reference to:
  - (a) if the last return made by the person was a return under section 449 (1) of the Act, the period commencing on the first day after the return date and ending on



30 June in that particular year, or

- (b) if the last return made by a person was a return under section 449 (3) of the Act, the period commencing on the expiration of the period to which that return relates and ending on 30 June in that particular year.

### **182 Matters relating to the interests that must be included in returns**

- (1) **Interests etc outside New South Wales** A reference in this Part or in Schedule 3 to a disclosure concerning a corporation or other thing includes a reference to a disclosure concerning a corporation registered, or other thing arising or received, outside New South Wales.
- (2) **References to interests in real property** A reference in this Part or in Schedule 3 to real property in which a councillor or designated person has an interest includes a reference to any real property situated in Australia in which the councillor or designated person has an interest.
- (3) **Gifts, loans etc from related corporations** For the purposes of this Part and Schedule 3, gifts or contributions to travel given, loans made, or goods or services supplied, to a councillor or designated person by two or more corporations that are related to each other for the purposes of section 50 of the *Corporations Act 2001* of the Commonwealth are all given, made or supplied by a single corporation.

## **Division 2 Pecuniary interests to be disclosed in returns**

### **183 Real property**

- (1) A person making a return under section 449 (1) of the Act must disclose:
  - (a) the address of each parcel of real property in which he or she had an interest on the return date, and
  - (b) the nature of the interest.
- (2) A person making a return under section 449 (3) of the Act must disclose:
  - (a) the address of each parcel of real property in which he or she had an interest at any time since the last return under Part 2 of Chapter 14 of the Act was made, and
  - (b) the nature of the interest.
- (3) An interest in a parcel of real property need not be disclosed in a return if the person making the return had the interest only:
  - (a) as executor of the will, or administrator of the estate, of a deceased person and not as a beneficiary under the will or intestacy, or
  - (b) as a trustee, if the interest was acquired in the ordinary course of an occupation

not related to his or her duties as the holder of a position required to make a return.

(4) In this clause, **interest** includes an option to purchase.

#### **184 Gifts**

- (1) A person making a return under section 449 (3) of the Act must disclose:
  - (a) a description of each gift received since the last return under Part 2 of Chapter 14 of the Act was made, and
  - (b) the name and address of the donor of each of the gifts.
- (2) A gift need not be included in a return if:
  - (a) it did not exceed \$500, unless it was among gifts totalling more than \$500 made by the same person during a period of 12 months or less, or
  - (b) it was a political contribution disclosed, or required to be disclosed, under Part 6 of the [Election Funding Act 1981](#), or
  - (c) the donor was a relative of the donee.
- (3) For the purposes of this clause, the amount of a gift other than money is an amount equal to the value of the property given.

#### **185 Contributions to travel**

- (1) A person making a return under section 449 (3) of the Act must disclose:
  - (a) the name and address of each person who made any financial or other contribution to the expenses of any travel undertaken by the person since the last return under Part 2 of Chapter 14 was made, and
  - (b) the dates on which the travel was undertaken, and
  - (c) the names of the States and Territories, and of the overseas countries, in which the travel was undertaken.
- (2) A financial or other contribution to any travel need not be disclosed under this clause if it:
  - (a) was made from public funds (including a contribution arising from travel on free passes issued under an Act or from travel in government or council vehicles), or
  - (b) was made by a relative of the traveller, or
  - (c) was made in the ordinary course of an occupation of the traveller that is not related to his or her functions as the holder of a position requiring the making of a

return, or

- (d) did not exceed \$250, unless it was among gifts totalling more than \$250 made by the same person during a 12 month period or less, or
- (e) was a political contribution disclosed, or required to be disclosed, under Part 6 of the *Election Funding Act 1981*, or
- (f) was made by a political party of which the traveller was a member and the travel was undertaken for the purpose of political activity of the party in New South Wales or to enable the traveller to represent the party within Australia.

(3) For the purposes of this clause, the amount of a contribution (other than a financial contribution) is an amount equal to the value of the contribution.

### **186 Interests and positions in corporations**

(1) A person making a return must disclose:

- (a) the name and address of each corporation in which he or she had an interest or held a position (whether remunerated or not) on the return date (in the case of a return under section 449 (1) of the Act) or at any time since the last return under Part 2 of Chapter 14 of the Act was made (in the case of a return under section 449 (3) of the Act), and
- (b) the nature of the interest, or the position held, in each of the corporations, and
- (c) a description of the principal objects (if any) of each of the corporations, except in the case of a listed company.

(2) An interest in, or a position held in, a corporation need not be disclosed if the corporation is:

- (a) formed for the purpose of providing recreation or amusement or for promoting commerce, industry, art, science, religion or charity, or for any other community purpose, and
- (b) required to apply its profits or other income in promoting its objects, and
- (c) prohibited from paying any dividend to its members.

(3) An interest in a corporation need not be disclosed if the interest is a beneficial interest in shares in a company that does not exceed 10 per cent of the voting rights in the company.

### **187 Positions in trade unions and professional or business associations**

A person making a return must disclose:

- (a) the name of each trade union, and of each professional or business association, in which he or she held any position (whether remunerated or not) on the return date (in the case of a return under section 449 (1) of the Act) or at any time since the last return under Part 2 of Chapter 14 was made (in the case of a return under section 449 (3) of the Act), and
- (b) a description of the position held in each of the unions and associations.

### **188 Dispositions of real property**

- (1) A person making a return under section 449 (3) of the Act must disclose particulars of each disposition of real property by the person, at any time since the last return under Part 2 of Chapter 14 of the Act was made, under which he or she wholly or partly retained the use and benefit of the property or the right to re-acquire the property.
- (2) A person making a return under section 449 (3) of the Act must disclose particulars of each disposition of real property to another person, since the last return under Part 2 of Chapter 14 of the Act was made, that is made under arrangements with, but is not made by, the person making the return, being a disposition under which the person making the return obtained wholly or partly the use of the property.

### **189 Sources of income**

- (1) A person making a return must disclose:
  - (a) in the case of a return under section 449 (1) of the Act—each source of income that the person reasonably expects to receive in the period commencing on the first day after the return date and ending on the following 30 June, and
  - (b) in the case of a return under section 449 (3) of the Act—each source of income received by the person since the last return under Part 2 of Chapter 14 of the Act was made.
- (2) A reference in subclause (1) to each source of income received, or reasonably expected to be received, by a person is a reference to:
  - (a) in relation to income from an occupation of the person:
    - (i) a description of the occupation, and
    - (ii) if the person is employed or the holder of an office, the name and address of his or her employer or a description of the office, and
    - (iii) if the person has entered into a partnership with other persons, the name (if any) under which the partnership is conducted, or
  - (b) in relation to income from a trust, the name and address of the settlor and the trustee, or

(c) in relation to any other income, a description sufficient to identify the person from whom, or the circumstances in which, the income was, or is reasonably expected to be, received.

(3) The source of any income need not be disclosed by a person in a return if the amount of the income received, or reasonably expected to be received, by the person from that source did not exceed \$500, or is not reasonably expected to exceed \$500, as the case may be.

## **190 Debts**

(1) A person making a return must disclose the name and address of each person to whom the person was liable to pay any debt:

(a) in the case of a return under section 449 (1) of the Act—on the return date, or

(b) in the case of a return under section 449 (3) of the Act—at any time since the last return under Part 2 of Chapter 14 of the Act was made.

(2) A liability to pay a debt must be disclosed by a person in a return whether or not the amount, or any part of the amount, to be paid was due and payable on the return date or at any time since the last return under Part 2 of Chapter 14 of the Act was made, as the case may be.

(3) A liability to pay a debt need not be disclosed by a person in a return if:

(a) the amount to be paid did not exceed \$500 on the return date or at any time since the last return under Part 2 of Chapter 14 of the Act was made, as the case may be, unless:

(i) the debt was one of two or more debts that the person was liable to pay to one person on the return date or at any time since the last return was made, as the case may be, and

(ii) the amounts to be paid exceeded, in the aggregate, \$500, or

(b) the person was liable to pay the debt to a relative, or

(c) in the case of a debt arising from a loan of money the person was liable to pay the debt to an authorised deposit-taking institution or other person whose ordinary business includes the lending of money and the loan was made in the ordinary course of business of the lender, or

(d) in the case of a debt arising from the supply of goods or services:

(i) the goods or services were supplied in the period of 12 months immediately preceding the return date or were supplied since the last return under Part 2 of Chapter 14 of the Act was made, as the case may be, or

- (ii) the goods or services were supplied in the ordinary course of any occupation of the person that is not related to his or her duties as the holder of a position required to make a return.

### **191 Discretionary disclosures**

A person may voluntarily disclose in a return any interest, benefit, advantage or liability, whether pecuniary or not, that is not required to be disclosed under another provision of this Part.

## **Division 3 Form of return**

### **192 Form of return**

For the purposes of section 449 of the Act, the form set out in Schedule 3 is prescribed.

## **Division 4 Conduct generally**

### **193 Code of conduct**

For the purposes of section 440 (Codes of conduct) of the Act, the Code called *The Model Code of Conduct for Local Councils in NSW*, as published in the Gazette on 27 June 2008, is prescribed as the model code of conduct.

### **194 Acts of disorder**

For the purposes of Chapter 14 (Honesty and disclosure of interests) of, and Schedule 6A (Code of conduct) to, the Act, the acts of disorder specified in clause 256 (1) are prescribed as acts of disorder.

## **Division 5 Appeals against suspension**

### **195 Making of appeal**

An appeal under section 440M of the Act is to be made:

- (a) in accordance with any relevant procedures set out in the *Pecuniary Interest and Disciplinary Tribunal Procedure Manual* published by the Pecuniary Interest and Disciplinary Tribunal, as in force from time to time, or
- (b) if there are no such relevant procedures (or no such manual)—by giving written notice of the appeal to that Tribunal.

## 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.

**Departmental representative** means a person authorised under section 430 of the Act.

**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 2 Draft management plans

#### 197 Guidelines

In preparing a draft management plan required under Part 2 of Chapter 13 of the Act, a council must have regard to any relevant guidelines or directions issued to the council by the Director-General.

#### 198 Additional matters to be included in draft management plans

- (1) For the purposes of the fifth dot point of section 403 (1) of the Act, any proposed council activity relating to the management of any of the following is prescribed:
  - (a) stormwater,

- (b) coasts and estuaries,
  - (c) sewage,
  - (d) waste.
- (2) A draft management plan must contain the following particulars in relation to such of the proposed activities referred to in subclause (1) as are relevant to the council's area:
- (a) particulars of the relevant characteristics of the area, catchment or region in which the proposed activity is to be conducted, with special reference to:
    - (i) any commercial pressures, and
    - (ii) any problems or issues identified in relation to the proposed activity in the council's state of the environment reports,
  - (b) particulars of the council's evaluation of possible methods of dealing with those pressures, problems and issues,
  - (c) particulars of the council's membership (or proposed membership) of any bodies relating to the proposed activity, including particulars of any significant variation in the way the activity is proposed to be carried out from any recommendation of such a body (together with the reasons for the variation),
  - (d) particulars of any action to be taken jointly with other councils or bodies, including particulars of any significant variation in the way the activity is proposed to be carried out from any recommendation of such a council or body (together with the reasons for the variation),
  - (e) particulars of any significant variation in the council's plan from any guidelines or directions issued by the Director-General (together with the reasons for the variation).

**199 Draft management plan—activities relating to ecologically sustainable development**

- (1) When preparing the part of its draft management plan dealing with environmental protection activities, a council must do the following:
- (a) it must apply the principles of ecologically sustainable development,
  - (b) it must consider its most recent comprehensive state of the environment report,

**Note—**

Under clause 226, a comprehensive state of the environment report is taken to include any subsequent supplementary state of the environment reports relating to the same area.

- (c) it must consult the community (including environmental groups),



(d) it must involve the community (including environmental groups) in the development of environmental management strategies.

(2) In this clause, **environmental protection activities** means the principal activities that the council proposes to conduct in order to properly manage, develop, protect, restore, enhance and conserve the environment in a manner that is consistent with and promotes the principles of ecologically sustainable development (as referred to in section 403 (2) of the Act).

**200 Additional matters to be included in draft management plans—implementation of access and equity activities**

- (1) For the purposes of the fifth dot point in section 403 (1) of the Act, any proposed council activity relating to access and equity activities to meet the needs of residents in the council's area is prescribed as a matter with respect to which a draft management plan must contain a statement.
- (2) The statement in a draft management plan of a council relating to any proposed activity referred to in subclause (1) must contain particulars (in the form required by the Department) of the access and equity activities it proposes to undertake during the period covered by the draft management plan (including access and equity initiatives prioritised in the council's community or social plan prepared in accordance with guidelines issued from time to time by the Department for the period to which the draft management plan relates).

**200A Additional matters to be included in draft management plans—stormwater management services**

- (1) For the purposes of the fifth dot point of section 403 (1) of the Act, any activity relating to stormwater management services in respect of which the council proposes to levy an annual charge is prescribed as a matter with respect to which a draft management plan must contain a statement.
- (2) The statement in a draft management plan of a council relating to any proposed activity referred to in subclause (1) must include the following:
  - (a) particulars of the stormwater management services that are to be funded by the annual charge,
  - (b) particulars of the stormwater management services that are to be funded from sources other than the annual charge,
  - (c) particulars of any stormwater management services that are to be funded from the annual charge and from other sources noting the proportion funded from other sources,
  - (d) particulars of the council's proposed expenditure for the provision of stormwater

management services.

- (3) If a council proposes to levy an annual charge for stormwater management services on land for which a relevant charge has been, or is to be, levied to fund works or activities that have as their primary purpose the provision of storm water management services, the statement referred to in subclause (1) must also include:
  - (a) particulars of the activities to be funded by the relevant charge, and
  - (b) particulars of how those activities differ from those funded by the annual charge for stormwater management services, and
  - (c) particulars of the activities that are jointly funded by the relevant charge and the annual charge for stormwater management services, noting the proportion.
- (4) If a council proposes to levy an annual charge for stormwater management services on land that is subject to a catchment action plan, the statement referred to in subclause (1) must indicate that the council has considered the plan when preparing the statement.
- (5) In this clause:

**catchment action plan** has the same meaning as in the [Catchment Management Authorities Act 2003](#).

**relevant charge** means any of the following:

- (a) a rate within the meaning of the [Hunter Water Act 1991](#),
- (b) a river management service charge, drainage service charge or flood mitigation service charge levied under section 310 to the [Water Management Act 2000](#),
- (c) a stormwater drainage area charge within the meaning of the [Sydney Water Act 1994](#),
- (d) a catchment contribution within the meaning of Schedule 4 to the [Catchment Management Authorities Act 2003](#).

## **Division 3 Management plans and budgeting by councils**

### **201 Requirements as to estimates of income and expenditure**

The council's detailed estimate of its income and expenditure required by section 404 (1) of the Act to be included in its draft management plan for a year must be prepared in accordance with the Code.

### **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, 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 management plan that the council has adopted 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 a Departmental representative, and
- (b) render all practicable assistance to the mayor, responsible accounting officer, general manager, auditor or Departmental representative 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 Director-General 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 clause 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 subclause (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 subclause 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 clause 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 subclause (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 clause 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 clause 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 Director-General, 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 in a newspaper circulating in its area. The council must specify in the notice that any member of the public is entitled to inspect, without fee, the amended financial reports at each of the council's offices during the council's ordinary office hours.



## **Division 7 Annual reports**

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

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

- (1) For the purposes of section 428 (2) (r) 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,
      - (iv) the training of councillors and the provision of skill development for 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 Director-General 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,
- (b) a statement of the total remuneration comprised in the remuneration package of each senior staff member employed during the year that is to include, for each such member, 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 member that do not form part of the salary component of the member's package,
  - (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 member may be a contributor,
  - (iv) the total value of any non-cash benefits for which the member 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) details of the activities undertaken by the council during the year to develop and promote services and programs that provide for the needs of children,
- (d) for any year ending on or after 30 June 2005:
- (i) a report (in the form required by the Department) on the council's performance in relation to access and equity activities to meet residents' needs outlined in the council's management plan relating to the year and undertaken by the council during the year, and
  - (ii) a list of the Category 1 business activities of the council, and
  - (iii) a list of the Category 2 business activities of the council, and
  - (iv) a statement of expenses, revenues and assets in relation to each Category 1 business activity, and
  - (v) a summary of the progress of the council in implementing the principles of competitive neutrality, and
  - (vi) a statement as to whether the competitive neutrality pricing requirements have or have not been applied to each Category 1 business activity of the council, and
  - (vii) a statement regarding the establishment of a complaints handling

mechanism for competitive neutrality complaints, and as to the manner in which the council publicises and makes the mechanism known to the public, and

(viii) a comparison of the actual performance of each Category 1 business activity of the council (measured in accordance with the criteria set out in the relevant management plan) with its projected performance (outlined in the management plan relating to the year concerned), together with a statement of the reasons for any difference between them, and

(ix) a summary of competitive neutrality complaints that have been made against the council during the year (including details of the number of complaints received and the subject matter or nature of the complaints) and a statement as to the outcome of those complaints (including details as to the number of complaints disposed of during the year and the number still outstanding at the end of the year),

(e) if the council has levied an annual charge for stormwater management services—a comparison of the actual stormwater management services made available by the council during the year (measured in accordance with the criteria set out in the relevant management plan) with the projected stormwater management services that were proposed to be made available (outlined in the management plan relating to the year concerned), together with a statement of the reasons for any difference between them,

(f) a detailed statement, prepared in accordance with such guidelines as may be issued by the Director-General 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.

(2) An annual report of a council is to include the matter required by Subdivision 2 (State of the environment reports).

(2A) The obligation to include the information specified in subclause (1) (a1) does not apply to the annual report of a council for the year ending 30 June 2006.

(3) In this clause:

**competitive neutrality pricing requirements** means the requirements, outlined in the Pricing and Costing Guidelines, that a council's business activities:

(a) if the council has provided or intends to provide loan funds to the business activity, include the payment of debt guarantee fees to the council, and

(b) factor into costs an appropriate return on capital invested, and

(c) include Taxation Equivalent Regime payments to the council.

**Taxation Equivalent Regime payments** has the same meaning as in the Pricing and Costing Guidelines.

## **Subdivision 2 State of the environment reports**

### **218 Meaning of “environmental indicator”**

For the purposes of this Subdivision, an **environmental indicator** is an aspect of the natural world or built environment that can be monitored to provide information on environmental conditions and trends. Environmental indicators include physical, chemical, biological and socio-economic measures of the environment (such as measurements of contaminants in soil, of the health of fish species and of the number of motor vehicles per household) that can be used to assess natural resources and environmental quality.

**Note—**

This elucidation of the term “environmental indicator” is based on the definition contained in the Glossary to the Report called *Australia: State of the Environment 1996* issued by the Commonwealth.

### **219 Requirements for state of the environment reports**

- (1) All state of the environment reports must meet the requirements of clause 220.
- (2) In addition:
  - (a) a comprehensive state of the environment report must meet the requirements of clauses 221 and 222, and
  - (b) a supplementary state of the environment report must meet the requirements of clause 223.

### **220 Preparation of all state of the environment reports**

A state of the environment report meets the requirements of this clause if the council, in preparing the report, does each of the following:

- (a) it considers the guidelines and directions (if any) relating to the preparation and content of state of the environment reports that are issued to councils from time to time by the Director-General,
- (b) it consults the community (including environmental groups),
- (c) it involves the community (including environmental groups) in monitoring changes to the environment over time,
- (d) it produces the report in a form that is readily understandable by the general community.

### **221 Preparation of comprehensive state of the environment reports**

- (1) A state of the environment report meets the requirements of this clause if the council,

in preparing the report, does each of the following in relation to each environmental sector specified in section 428 (2) (c) of the Act:

- (a) it draws on any environmental data held by other councils that is relevant to the sector,

**Note—**

For example, in relation to the water environmental sector, the data might include information concerning water catchments and groundwater aquifers in nearby areas.

- (b) it identifies and applies appropriate environmental indicators for the sector,

- (c) it considers and applies the pressure-state-response model in:

- (i) the analysis and interpretation of data, and
- (ii) the identification of appropriate environmental indicators for the sector, and
- (iii) the presentation of results in the report.

- (2) In this clause, the **pressure-state-response model** means a model for reporting on environmental sectors, in which:

- (a) the **pressure** component identifies and describes the pressure that human activities put on their immediate environment and their natural surroundings, and
- (b) the **state** component identifies and describes the current and projected state of the environment, and
- (c) the **response** component identifies and describes the response of councils, government agencies, industry and communities to the pressures on, and state of, the environment.

## **222 Content of comprehensive state of the environment reports**

A state of the environment report meets the requirements of this clause if it does each of the following in relation to each environmental sector specified in section 428 (2) (c) of the Act:

- (a) it provides, as a basis for comparison in subsequent reports, a statement outlining the condition (as at the date of the report) of the sector,
- (b) it makes the relevant comparison with the equivalent statement contained in the last report,
- (c) it includes (or refers to) all relevant background information,
- (d) it specifies the relevant environmental indicators,
- (e) it reports on all major environmental impacts and related activities,

- (f) it identifies any gaps in relevant information and indicates the way in which the missing information is to be obtained (or, if it cannot be obtained, why it cannot be obtained).

### **223 Content of supplementary state of the environment reports**

A state of the environment report meets the requirements of this clause if it does each of the following:

- (a) it identifies any new environmental impacts since the council's last state of the environment report,
- (b) it updates the trends in environmental indicators that are important to each environmental sector specified in section 428 (2) (c) of the Act.

### **224 Frequency of comprehensive and supplementary reports**

- (1) The first state of the environment report of a council for the year ending after each election of the councillors for its area must be a comprehensive state of the environment report.

**Note—**

Under section 287 of the Act, such an election must be held every 4 years. A council's **year** is defined in the Dictionary to the Act to end on 30 June, and its annual report (which includes its state of the environment report) must be prepared within 5 months after that date (section 428)—that is, by 30 November. Accordingly, this subclause requires the state of the environment report prepared by the November of the year *following* the year in which the election is held to be a comprehensive state of the environment report.

- (2) The other state of the environment reports may each be either a comprehensive state of the environment report or a supplementary state of the environment report, as the council chooses.

### **225 Report may contain information relating to region**

- (1) A council must include in each of its state of the environment reports information relating to the general region in which the council's area is located if the requirements of section 428 (2) (c) of the Act in relation to the area cannot be met solely by reference to that area.
- (2) Such information may, in any case, be included in any state of the environment report.
- (3) A report that includes information relating to the general region in which the council's area is located:
  - (a) must clearly indicate the parts of the report that relate solely to the council's own area, and
  - (b) must meet all the requirements of the Act and this Subdivision in relation to that area.

## **226 Comprehensive report taken to include supplementary report**

A council's comprehensive state of the environment report is taken to include any subsequent supplementary state of the environment report prepared (before the preparation of the next comprehensive state of the environment report) in relation to the same area.

## **Division 8 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 Director-General**

- (1) Within 7 days after a council borrows money under a loan contract, the general manager must notify the Director-General of the borrowing.
- (2) This clause 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**

### **Division 1 Preliminary**

#### **231 Definitions**

In this Part:

**amendment**, in relation to an original motion, means a motion moving an amendment to that motion.

**chairperson**:

- (a) in relation to a meeting of a council—means the person presiding at the meeting as provided by section 369 of the Act, and
- (b) in relation to a meeting of a committee of a council—means the person presiding at the meeting as provided by clause 267.

**committee**, in relation to a council, means a committee established under clause 260 or the council when it has resolved itself into a committee of the whole.

**councillor** includes a member of the governing body of a county council.

### **Division 2 Convening of, and attendance at, council meetings**

#### **232 Notice of meetings**

- (1) This clause prescribes the manner in which the requirements outlined in section 9 (1) of the Act are to be complied with.
- (2) A notice of a meeting of a council or of a committee must be published in a newspaper circulating in the area before the meeting takes place.
- (3) The notice must specify the time and place of the meeting.
- (4) Notice of more than one meeting may be given in the same notice.
- (5) This clause does not apply to an extraordinary meeting of a council or committee.

#### **233 What happens when a quorum is not present**

- (1) A meeting of a council must be adjourned if a quorum is not present:
  - (a) within half an hour after the time designated for the holding of the meeting, or
  - (b) at any time during the meeting.
- (2) In either case, the meeting must be adjourned to a time, date and place fixed:
  - (a) by the chairperson, or



(b) in his or her absence—by the majority of the councillors present, or

(c) failing that, by the general manager.

(3) The general manager must record in the council's minutes the circumstances relating to the absence of a quorum (including the reasons for the absence of a quorum) at or arising during a meeting of the council, together with the names of the councillors present.

#### **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 clause.

#### **235 Presence at council meetings**

A councillor cannot participate in a meeting of a council unless personally present at the meeting.

##### **235A Leave of absence**

(1) A councillor's application for leave of absence from council meetings should, if practicable, identify (by date) the meetings from which the councillor intends to be absent.

(2) A councillor who intends to attend a council meeting despite having been granted leave of absence should, if practicable, give the general manager at least 2 days' notice of his or her intention to attend.

### **Division 3 Procedure for the conduct of council meetings**

#### **236 Councillor to be elected to preside at certain meetings**

(1) If no chairperson is present at a meeting of a council at the time designated for the holding of the meeting, the first business of the meeting must be the election of a chairperson to preside at the meeting.

##### **Note—**

Section 369 (2) of the Act provides for a councillor to be elected to chair a meeting of a council when the

mayor and deputy mayor are absent.

- (2) The election must be conducted:
  - (a) by the general manager or, in his or her absence, an employee of the council designated by the general manager to conduct the election, or
  - (b) if neither of them is present at the meeting or there is no general manager or designated employee—by the person who called the meeting or a person acting on his or her behalf.
- (3) If, at an election of a chairperson, 2 or more candidates receive the same number of votes and no other candidate receives a greater number of votes, the chairperson is to be the candidate whose name is chosen by lot.
- (4) For the purposes of subclause (3), the person conducting the election must:
  - (a) arrange for the names of the candidates who have equal numbers of votes to be written on similar slips, and
  - (b) then fold the slips so as to prevent the names from being seen, mix the slips and draw one of the slips at random.
- (5) The candidate whose name is on the drawn slip is the candidate who is to be the chairperson.

### **237 Chairperson to have precedence**

When the chairperson rises during a meeting of a council:

- (a) any councillor then speaking or seeking to speak must, if standing, immediately resume his or her seat, and
- (b) every councillor present must be silent to enable the chairperson to be heard without interruption.

### **238 Chairperson's duty with respect to motions**

- (1) It is the duty of the chairperson at a meeting of a council to receive and put to the meeting any lawful motion that is brought before the meeting.
- (2) The chairperson must rule out of order any motion that is unlawful or the implementation of which would be unlawful.
- (3) Any motion, amendment or other matter that the chairperson has ruled out of order is taken to have been rejected.

### **239 Order of business**

- (1) At a meeting of a council (other than an extraordinary meeting), the general order of

business is (except as provided by this Regulation) as fixed by the council's code of meeting practice or (if the council does not have a code of meeting practice or its code of meeting practice does not fix the general order of business) as fixed by resolution of the council.

- (2) The order of business fixed under subclause (1) may be altered if a motion to that effect is passed. Such a motion can be moved without notice.
- (3) Despite clause 250, only the mover of a motion referred to in subclause (2) may speak to the motion before it is put.

#### **240 Agenda and business papers for council meetings**

- (1) The general manager must ensure that the agenda for a meeting of the council states:
  - (a) all matters to be dealt with arising out of the proceedings of former meetings of the council, and
  - (b) if the mayor is the chairperson—any matter or topic that the chairperson proposes, at the time when the agenda is prepared, to put to the meeting, and
  - (c) subject to subclause (2), any business of which due notice has been given.
- (2) The general manager must not include in the agenda for a meeting of the council any business of which due notice has been given if, in the opinion of the general manager, the business is (or the implementation of the business would be) unlawful. The general manager must report (without giving details of the item of business) any such exclusion to the next meeting of the council.
- (3) The general manager must cause the agenda for a meeting of the council or a committee of the council to be prepared as soon as practicable before the meeting.
- (4) The general manager must ensure that the details of any item of business to which section 9 (2A) of the Act applies are included in a business paper for the meeting concerned.
- (5) Nothing in this clause limits the powers of the chairperson under clause 243.

#### **241 Giving notice of business**

- (1) A council must not transact business at a meeting of the council:
  - (a) unless a councillor has given notice of the business in writing within such time before the meeting as is fixed by the council's code of meeting practice or (if the council does not have a code of meeting practice or its code of meeting practice does not fix that time) as is fixed by resolution of the council, and
  - (b) unless notice of the business has been sent to the councillors in accordance with

section 367 of the Act.

- (2) Subclause (1) does not apply to the consideration of business at a meeting if the business:
- (a) is already before, or directly relates to a matter that is already before, the council, or
  - (b) is the election of a chairperson to preside at the meeting as provided by clause 236 (1), or
  - (c) is a matter or topic put to the meeting by the chairperson in accordance with clause 243, or
  - (d) is a motion for the adoption of recommendations of a committee of the council.
- (3) Despite subclause (1), business may be transacted at a meeting of a council even though due notice of the business has not been given to the councillors. However, this can happen only if:
- (a) a motion is passed to have the business transacted at the meeting, and
  - (b) the business proposed to be brought forward is ruled by the chairperson to be of great urgency.
- Such a motion can be moved without notice.
- (4) Despite clause 250, only the mover of a motion referred to in subclause (3) can speak to the motion before it is put.

#### **242 Agenda for extraordinary meetings**

- (1) The general manager must ensure that the agenda for an extraordinary meeting of a council deals only with the matters stated in the notice of the meeting.
- (2) Despite subclause (1), business may be transacted at an extraordinary meeting of a council even though due notice of the business has not been given to the councillors. However, this can happen only if:
- (a) a motion is passed to have the business transacted at the meeting, and
  - (b) the business proposed to be brought forward is ruled by the chairperson to be of great urgency.
- Such a motion can be moved without notice but only after the business notified in the agenda for the meeting has been disposed of.
- (3) Despite clause 250, only the mover of a motion referred to in subclause (2) can speak to the motion before it is put.

### **243 Official minutes**

- (1) If the mayor is the chairperson at a meeting of a council, the chairperson is, by minute signed by the chairperson, entitled to put to the meeting without notice any matter or topic that is within the jurisdiction of the council or of which the council has official knowledge.
- (2) Such a minute, when put to the meeting, takes precedence over all business on the council's agenda for the meeting. The chairperson (but only if the chairperson is the mayor) may move the adoption of the minute without the motion being seconded.
- (3) A recommendation made in a minute of the chairperson (being the mayor) or in a report made by a council employee is, so far as adopted by the council, a resolution of the council.

### **244 Report of a Departmental representative to be tabled at council meeting**

When a report of a Departmental representative 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.

### **245 Notice of motion—absence of mover**

In the absence of a councillor who has placed a notice of motion on the agenda for a meeting of a council:

- (a) any other councillor may move the motion at the meeting, or
- (b) the chairperson may defer the motion until the next meeting of the council at which the motion can be considered.

### **246 Motions to be seconded**

A motion or an amendment cannot be debated unless or until it has been seconded. This clause is subject to clauses 243 (2) and 250 (5).

### **247 How subsequent amendments may be moved**

If an amendment has been rejected, a further amendment can be moved to the motion to which the rejected amendment was moved, and so on, but no more than one motion and one proposed amendment can be before the council at any one time.

### **248 Motions of dissent**

- (1) A councillor can, without notice, move to dissent from the ruling of the chairperson on a point of order. If that happens, the chairperson must suspend the business before

the meeting until a decision is made on the motion of dissent.

- (2) If a motion of dissent is passed, the chairperson must proceed with the suspended business as though the ruling dissented from had not been given. If, as a result of the ruling, any motion or business has been discharged as out of order, the chairperson must restore the motion or business to the agenda and proceed with it in due course.
- (3) Despite clause 250, only the mover of a motion of dissent and the chairperson can speak to the motion before it is put. The mover of the motion does not have a right of general reply.

#### **249 Questions may be put to councillors and council employees**

- (1) A councillor:
  - (a) may, through the chairperson, put a question to another councillor, and
  - (b) may, through the general manager, put a question to a council employee.
- (2) However, a councillor or council employee to whom a question is put is entitled to be given reasonable notice of the question and, in particular, sufficient notice to enable reference to be made to other persons or to documents.
- (3) The councillor must put every such question directly, succinctly and without argument.
- (4) The chairperson must not permit discussion on any reply or refusal to reply to a question put to a councillor or council employee under this clause.

#### **250 Limitation as to number of speeches**

- (1) A councillor who, during a debate at a meeting of a council, moves an original motion has the right of general reply to all observations that are made by another councillor during the debate in relation to the motion and to any amendment to it, as well as the right to speak on any such amendment.
- (2) A councillor, other than the mover of an original motion, has the right to speak once on the motion and once on each amendment to it.
- (3) A councillor must not, without the consent of the council, speak more than once on a motion or an amendment, or for longer than 5 minutes at any one time. However, the chairperson may permit a councillor who claims to have been misrepresented or misunderstood to speak more than once on a motion or an amendment, and for longer than 5 minutes on that motion or amendment to enable the councillor to make a statement limited to explaining the misrepresentation or misunderstanding.
- (4) Despite subclauses (1) and (2), a councillor may move that a motion or an amendment be now put:

- (a) if the mover of the motion or amendment has spoken in favour of it and no councillor expresses an intention to speak against it, or
  - (b) if at least 2 councillors have spoken in favour of the motion or amendment and at least 2 councillors have spoken against it.
- (5) The chairperson must immediately put to the vote, without debate, a motion moved under subclause (4). A seconder is not required for such a motion.
- (6) If a motion that the original motion or an amendment be now put is passed, the chairperson must, without further debate, put the original motion or amendment to the vote immediately after the mover of the original motion has exercised his or her right of reply under subclause (1).
- (7) If a motion that the original motion or an amendment be now put is rejected, the chairperson must allow the debate on the original motion or the amendment to be resumed.

### **251 Voting at council meetings**

- (1) A councillor who is present at a meeting of a council but who fails to vote on a motion put to the meeting is taken to have voted against the motion.
- (2) If a councillor who has voted against a motion put at a council meeting so requests, the general manager must ensure that the councillor's dissenting vote is recorded in the council's minutes.
- (3) The decision of the chairperson as to the result of a vote is final, unless the decision is immediately challenged and not fewer than 2 councillors rise and demand a division.
- (4) When a division on a motion is demanded, the chairperson must ensure that the division takes place immediately. The general manager must ensure that the names of those who vote for the motion and those who vote against it are respectively recorded in the council's minutes.
- (5) Voting at a council meeting, including voting in an election at such a meeting, is to be by open means (such as on the voices or by show of hands). However, the council may resolve that the voting in any election by councillors for mayor or deputy mayor is to be by secret ballot.

#### **Note—**

Part 11 of this Regulation provides that a council is to resolve whether an election by the councillors for mayor or deputy mayor is to be by preferential ballot, ordinary ballot or open voting (clause 394 and clause 3 of Schedule 7). Clause 3 of Schedule 7 also makes it clear that **ballot** has its normal meaning of secret ballot.

### **252 Representations by members of the public—closure of part of meeting**

- (1) A representation at a council meeting by a member of the public as to whether a part

of the meeting should be closed to the public can only be made for a fixed period immediately after the motion to close the part of the meeting is moved and seconded.

- (2) That period is as fixed by the council's code of meeting practice or (if the council does not have a code of meeting practice or its code of meeting practice does not fix that period) as fixed by resolution of the council. Different periods can be fixed according to the different types of matters to be discussed or received and discussed at closed parts of meetings.

### **253 Resolutions passed at closed meetings to be made public**

If a council passes a resolution during a meeting, or a part of a meeting, that is closed to the public, the chairperson must make the resolution public as soon as practicable after the meeting or part of the meeting has ended.

### **254 Matters to be included in minutes of council meeting**

The general manager must ensure that the following matters are recorded in the council's minutes:

- (a) details of each motion moved at a council meeting and of any amendments moved to it,
- (b) the names of the mover and seconder of the motion or amendment,
- (c) whether the motion or amendment is passed or lost.

#### **Note—**

Section 375 (1) of the Act requires a council to ensure that full and accurate minutes are kept of the proceedings of a meeting of the council (other provisions of this Regulation and of the Act require particular matters to be recorded in a council's minutes).

## **Division 4 Keeping order at meetings**

### **255 Questions of order**

- (1) The chairperson, without the intervention of any other councillor, may call any councillor to order whenever, in the opinion of the chairperson, it is necessary to do so.
- (2) A councillor who claims that another councillor has committed an act of disorder, or is out of order, may call the attention of the chairperson to the matter.
- (3) The chairperson must rule on a question of order immediately after it is raised but, before doing so, may invite the opinion of the council.
- (4) The chairperson's ruling must be obeyed unless a motion dissenting from the ruling is passed.



## **256 Acts of disorder**

- (1) 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 or any regulation in force under the Act, 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 or makes personal reflections on or imputes improper motives to any other councillor, 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.
- (2) The chairperson may require a councillor:
  - (a) to apologise without reservation for an act of disorder referred to in subclause (1) (a) or (b), or
  - (b) to withdraw a motion or an amendment referred to in subclause (1) (c) and, where appropriate, to apologise without reservation, or
  - (c) to retract and apologise without reservation for an act of disorder referred to in subclause (1) (d) or (e).
- (3) 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 subclause (2). 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.

## **257 How disorder at a meeting may be dealt with**

- (1) If disorder occurs at a meeting of a council, the chairperson may adjourn the meeting for a period of not more than 15 minutes and leave the chair. The council, on reassembling, must, on a question put from the chair, decide without debate whether the business is to be proceeded with or not. This subclause applies to disorder arising from the conduct of members of the public as well as disorder arising from the conduct of councillors.
- (2) A member of the public may, as provided by section 10 (2) (a) or (b) of the Act, be

expelled from a meeting of a council for engaging in or having engaged in disorderly conduct at the meeting.

### **258 Power to remove persons from meeting after expulsion**

If a councillor or a member of the public fails to leave the place where a meeting of a council is being held:

- (a) immediately after the council has passed a resolution expelling the councillor or member from the meeting, or
- (b) where the council has authorised the person presiding at the meeting to exercise the power of expulsion—immediately after being directed by the person presiding to leave the meeting,

a police officer, or any person authorised for the purpose by the council or person presiding, may, by using only such force as is necessary, remove the councillor or member from that place and, if necessary, restrain the councillor or member from re-entering that place.

## **Division 5 Council committees**

### **259 Committee of the whole**

- (1) All the provisions of this Regulation relating to meetings of a council, so far as they are applicable, extend to and govern the proceedings of the council when in committee of the whole, except the provision limiting the number and duration of speeches.
- (2) The general manager or, in the absence of the general manager, an employee of the council designated by the general manager is responsible for reporting to the council proceedings in committee of the whole. It is not necessary to report the proceedings in full but any recommendations of the committee must be reported.
- (3) The council must ensure that a report of the proceedings (including any recommendations of the committee) is recorded in the council's minutes. However, the council is not taken to have adopted the report until a motion for adoption has been made and passed.

### **260 Council may establish committees**

- (1) A council may, by resolution, establish such committees as it considers necessary.
- (2) A committee is to consist of the mayor and such other councillors as are elected by the councillors or appointed by the council.
- (3) The quorum for a meeting of a committee is to be:
  - (a) such number of members as the council decides, or

- (b) if the council has not decided a number—a majority of the members of the committee.

### **261 Functions of committees**

A council must specify the functions of each of its committees when the committee is established, but may from time to time amend those functions.

### **262 Notice of committee meetings to be given**

- (1) The general manager of a council must send to each councillor, at least 3 days before each meeting of the committee, a notice specifying:
  - (a) the time and place at which and the date on which the meeting is to be held, and
  - (b) the business proposed to be transacted at the meeting.
- (2) However, notice of less than 3 days may be given of a committee meeting called in an emergency.

### **263 Non-members entitled to attend committee meetings**

- (1) A councillor who is not a member of a committee of a council is entitled to attend, and to speak at, a meeting of the committee.
- (2) However, the councillor is not entitled:
  - (a) to give notice of business for inclusion in the agenda for the meeting, or
  - (b) to move or second a motion at the meeting, or
  - (c) to vote at the meeting.

### **264 Representations by members of the public—closure of part of meeting**

- (1) A representation at a committee meeting by a member of the public as to whether a part of the meeting should be closed to the public can only be made for a fixed period immediately after the motion to close the part of the meeting is moved and seconded.
- (2) That period is as fixed by the council's code of meeting practice or (if the council does not have a code of meeting practice or its code of meeting practice does not fix that period) as fixed by resolution of the council. Different periods can be fixed according to the different types of matters to be discussed or received and discussed at closed parts of meetings.

### **265 Procedure in committees**

- (1) Subject to subclause (3), each committee of a council may regulate its own procedure.
- (2) Without limiting subclause (1), a committee of a council may decide that, whenever

the voting on a motion put to a meeting of the committee is equal, the chairperson of the committee is to have a casting vote as well as an original vote.

- (3) Voting at a committee meeting is to be by open means (such as on the voices or by show of hands).

#### **266 Committees to keep minutes**

- (1) Each committee of a council must ensure that full and accurate minutes of the proceedings of its meetings are kept. In particular, a committee must ensure that the following matters are recorded in the committee's minutes:
  - (a) details of each motion moved at a meeting and of any amendments moved to it,
  - (b) the names of the mover and seconder of the motion or amendment,
  - (c) whether the motion or amendment is passed or lost.
- (2) As soon as the minutes of an earlier meeting of a committee of the council have been confirmed at a later meeting of the committee, the person presiding at the later meeting must sign the minutes of the earlier meeting.

#### **267 Chairperson and deputy chairperson of committees**

- (1) The chairperson of each committee of the council must be:
  - (a) the mayor, or
  - (b) if the mayor does not wish to be the chairperson of a committee—a member of the committee elected by the council, or
  - (c) if the council does not elect such a member—a member of the committee elected by the committee.
- (2) A council may elect a member of a committee of the council as deputy chairperson of the committee. If the council does not elect a deputy chairperson of such a committee, the committee may elect a deputy chairperson.
- (3) If neither the chairperson nor the deputy chairperson of a committee of a council is able or willing to preside at a meeting of the committee, the committee must elect a member of the committee to be acting chairperson of the committee.
- (4) The chairperson is to preside at a meeting of a committee of a council. If the chairperson is unable or unwilling to preside, the deputy chairperson (if any) is to preside at the meeting, but if neither the chairperson nor the deputy chairperson is able or willing to preside, the acting chairperson is to preside at the meeting.

### **268 Absence from committee meetings**

- (1) A member (other than the mayor) ceases to be a member of a committee if the member:
  - (a) has been absent from 3 consecutive meetings of the committee without having given reasons acceptable to the committee for the member's absences, or
  - (b) has been absent from at least half of the meetings of the committee held during the immediately preceding year without having given to the committee acceptable reasons for the member's absences.
- (2) Subclause (1) does not apply in respect of a committee that consists of all of the members of the council.

#### **Note—**

The expression **year** means the period beginning 1 July and ending the following 30 June. See the Dictionary to the Act.

### **269 Reports of committees**

- (1) If in a report of a committee of the council distinct recommendations are made, the decision of the council may be made separately on each recommendation.
- (2) The recommendations of a committee of the council are, so far as adopted by the council, resolutions of the council.
- (3) If a committee of a council passes a resolution, or makes a recommendation, during a meeting, or a part of a meeting, that is closed to the public, the chairperson must:
  - (a) make the resolution or recommendation public as soon as practicable after the meeting or part of the meeting has ended, and
  - (b) report the resolution or recommendation to the next meeting of the council.

### **270 Disorder in committee meetings**

The provisions of the Act and of this Regulation relating to the maintenance of order in council meetings apply to meetings of committees of the council in the same way as they apply to meetings of the council.

### **271 Certain persons may be expelled from council committee meetings**

- (1) If a meeting or part of a meeting of a committee of a council is closed to the public in accordance with section 10A of the Act, any person who is not a councillor may be expelled from the meeting as provided by section 10 (2) (a) or (b) of the Act.
- (2) If any such person, after being notified of a resolution or direction expelling him or her from the meeting, fails to leave the place where the meeting is being held, a police

officer, or any person authorised for the purpose by the council, committee or person presiding, may, by using only such force as is necessary, remove the first-mentioned person from that place and, if necessary, restrain that person from re-entering that place.

## **Division 6 Miscellaneous**

### **272 Inspection of the minutes of a council or committee**

- (1) An inspection of the minutes of a council or committee of a council is to be carried out under the supervision of the general manager or an employee of the council designated by the general manager to supervise inspections of those minutes.
- (2) The general manager must ensure that the minutes of the council and any minutes of a committee of the council are kept secure and in safe custody and that no unauthorised person is allowed to interfere with them.

**Note—**

Section 12 of the Act confers a right (restricted in the case of closed parts of meetings) to inspect the minutes of a council or committee of a council.

### **273 Tape recording of meeting of council or committee prohibited without permission**

- (1) A person may use a tape recorder to record the proceedings of a meeting of a council or a committee of a council only with the authority of the council or committee.
- (2) A person may, as provided by section 10 (2) (a) or (b) of the Act, be expelled from a meeting of a council or a committee of a council for using or having used a tape recorder in contravention of this clause.
- (3) If any such person, after being notified of a resolution or direction expelling him or her from the meeting, fails to leave the place where the meeting is being held, a police officer, or any person authorised for the purpose by the council or person presiding, may, by using only such force as is necessary, remove the first-mentioned person from that place and, if necessary, restrain that person from re-entering that place.
- (4) In this clause, **tape recorder** includes a video camera and any electronic device capable of recording speech, whether a magnetic tape is used to record or not.

## **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 subclause (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:

**close of the poll**, in relation to an election, means 6 pm on the day on which the election is held.

**closing date** or **roll closing date**, in relation to an election, means the date prescribed by clause 278 for the closing of the roll of electors for the election.

**Note—**

Clause 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 clause 327.

**declared institutions ballot-box** means the ballot-box reserved for the receipt of declared institution votes.

**election official** means:

- (a) a returning officer or substitute returning officer, or
- (b) an electoral official appointed by the returning officer under section 296 (3) of the Act.

**Electoral Commission** means the New South Wales Electoral Commission constituted by section 21A of the [Parliamentary Electorates and Elections Act 1912](#), and includes the Electoral Commissioner.

**Note—**

Section 21A of that Act provides that:

- (a) the functions of the Electoral Commission are exercisable by the Electoral Commissioner, and
- (b) any functions conferred or imposed on the Electoral Commissioner by or under any Act may be exercised by the Electoral Commissioner in his or her official name as Electoral Commissioner or in the name of the Commission.

**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.

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

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

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

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

**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 clause 298.

**pre-poll voting officer** means:

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

**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.

**section 305 vote** means a vote by an elector whose name is not on the roll of electors for an election and who votes under section 305 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.

**tendered vote** means a vote tendered under clause 344.

(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 Commission includes a reference to the returning officer where the Commission authorises the returning officer to exercise a specified function conferred or imposed on the Commission by 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.

### **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 must give notice of that fact.
- (2) The notice is to be given:
  - (a) by advertisement in a newspaper circulating generally in the council's area, and
  - (b) in writing displayed at the office of the council, and
  - (c) in writing delivered or sent to the Electoral Commission.
- (3) If, as a result of the changes referred to in this clause, there are any wards that are new or that have altered boundaries, the notice must include a written description of, and 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 clause** This clause 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 clause.
- (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 6 months before the roll closing date, unless the Electoral Commission approves in special circumstances determined by the Commission.
- (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 subclause does not apply to an alteration of ward boundaries (which is provided for by section 210 (6) of the Act).
- (4) **Transitional** Subclause (2) does not apply in relation to the ordinary election to be held in September 2008.

### **277B Advertising by Electoral Commission**

- (1) **General power to advertise** The Electoral Commission may publish (at such times as the Commission thinks fit) such electoral information as the Commission 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 by way of newspaper notices, by display on the Electoral Commission's internet website, or in any other manner the Commission thinks appropriate.
- (3) **Coverage of advertisement** A publication of information may relate to one or more areas.
- (4) **Relationship of clause to other provisions** This clause has effect subject to the specific requirements of clauses 280, 288 and 300, but nothing in those clauses prevents the Electoral Commission from publishing additional notices or information under this clause.

## Division 3 Electoral rolls

### 278 Closing date

- (1) For the purposes of the Dictionary to the Act, **closing date** is defined in this clause.
- (2) The closing date in relation to an election or poll is the date of the fortieth day preceding the 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 day of the election or poll—the date of the fortieth day preceding the new day of the election or poll, or
  - (b) in any other case—the date of the fortieth day preceding the original day.

### 279 Form of roll of electors

For the purposes of section 301 (2) of the Act, the form of the roll of electors is a form containing the following particulars:

- (a) the ward (if any) and area to which the roll relates,
- (b) a numbered entry containing the surname, other names and address of each elector (the entry being in alphabetical order according to surname).

## **280 Advertising of enrolments**

- (1) The Electoral Commission is to give notice under clause 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.
- (3) The notice is to be given at least once in the 14 days before the roll closing date for the election, constitutional referendum or council poll. The notice is to be given by advertisement in a newspaper circulating generally in the State or another newspaper circulating in the relevant area, or both.
- (4) An advertisement may contain notices required by this clause relating to more than one area.
- (5) The Electoral Commission must cause the information contained in a notice under this clause to be published on the Electoral Commission's internet website until at least 6 pm on the roll closing date for the election.
- (6) The council must cause the information referred to in subclause (5) to be published on the council's internet website, or provide a link on its website to the relevant part of the Electoral Commission's website, until at least 6 pm on the roll closing date for the election.

## **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 Commission 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 Commission 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 Commission 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 clause.
- (2) For the purposes of this clause, 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 Commission and general manager are to supply a reasonable number of copies of forms suitable for use for the purposes of clause 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 Commission must provide to the candidate, free of charge and in the manner and form determined by the Commission, 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 subclause (1), the Electoral Commission may determine that enrolment information to be provided under this clause is to be provided electronically or in electronic form.

#### **284B Use of enrolment information—application of section 31E of [Parliamentary Electorates and Elections Act 1912](#)**

- (1) The provisions of section 31E (1) and (2) (other than section 31E (2) (c)) of the [Parliamentary Electorates and Elections Act 1912](#) are adopted in connection with enrolment information provided under clause 284A, with modifications so that those provisions as modified are as set out in subclauses (2) and (3), including the penalty set out at the end of subclause (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 [Parliamentary Electorates and Elections Act 1912](#), 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 Commission under clause 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 31F of [Parliamentary Electorates and Elections Act 1912](#)**

(1) The provisions of section 31F (other than section 31F (5)) of the [Parliamentary Electorates and Elections Act 1912](#) are adopted in connection with enrolment information provided under clause 284A, with modifications so that those provisions as modified are as set out in subclauses (2)–(5), including the penalty set out at the end of this clause.

**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 [Parliamentary Electorates and Elections Act 1912](#), 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 clause, 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 clause 284A.
- (3) A person must not disclose protected information unless the disclosure would be a use of the information for a permitted purpose under clause 284B.
- (4) A person must not use protected information for a commercial purpose.
- (5) Without limiting subclause (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 Director-General and the Secretary of the Local Government and Shires Associations of New South Wales if the vacancy is in the office of a mayor elected by councillors, or
- (b) to the Electoral Commission, the Director-General and the Secretary of those Associations 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, or such other date as the Electoral

Commission determines in a particular case.

### **287 Place of nomination**

The place of nomination is determined by the returning officer, but it is to be the council's office if practicable.

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

- (1) Not less than one week before the nomination day, the Electoral Commission is to give public notice of the election by advertisement in a newspaper circulating in the area.
- (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 place of nomination, and
  - (d) specify the date when the poll will be held for the 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 Electoral Commission thinks appropriate.
- (4) An advertisement may contain notices required by subclause (1) relating to more than one area.
- (5) The Electoral Commission must cause the information contained in a notice under this clause to be published on the Electoral Commission's internet website until at least 12 noon on the nomination day for the election.
- (6) The council must cause the information referred to in subclause (5) to be published on the council's internet website, or provide a link on its website to the relevant part of the Electoral Commission's website, until at least 12 noon on the nomination day for the election.

### **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 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 completed and signed the Form of Consent included in the paper.

(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.

(5) A nomination paper must be delivered or sent (by post or otherwise), or transmitted by facsimile or email, so as to reach the returning officer by 12 noon on the nomination day. The returning officer must give a receipt for it 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 Electoral Commission 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, by the person proposed for nomination or some person on his or her behalf, in cash or by a cheque issued by an authorised deposit-taking institution but not by way of personal cheque. The deposit must be paid 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 the proposed candidate's full name and full residential address.
- (2) Nothing in this clause 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.
- (4) As soon as practicable after a candidate is nominated, the Electoral Commission must cause the information contained in the candidate's information sheet to be published on the Electoral Commission's internet website until at least election day. The Electoral Commission may edit the format in which the information is presented on the website and may delete any material the Commission thinks inappropriate to be included.
- (5) The council must cause the information referred to in subclause (4) to be published on the council's internet website, or provide a link on its website to the relevant part of the Electoral Commission's website, until at least election day.

## 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) Subclauses (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 that is to be returned under subclause (1) is to be returned:
  - (a) to the candidate (or to some person authorised in writing by the candidate to receive it), unless paragraph (b) applies, or
  - (b) to the candidate's personal representatives, if the candidate died before election day.
- (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) A person is to be allowed, at any reasonable time in office hours, to inspect, without charge, a list prepared by the returning officer of:
  - (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 they 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 must be displayed at the office of the returning officer between the time when the first name is placed on the list and noon on the nomination day.

#### **295 Returning officer to nominate candidates**

- (1) On the nomination day, and in the presence of such scrutineers and such reasonable number of other persons as choose to be present, the returning officer is to do the following, commencing at 12 noon:
  - (a) attend at the place of nomination, 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 Electoral Commission 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 subclause (1).

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

- (1) If, on the nomination day, 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 Director-General, the Secretary of the Local Government and Shires Associations of New South Wales, and the relevant general manager, and
  - (c) insert a copy of the written declaration in a newspaper circulating in the relevant 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**

### **297 Polling places**

- (1) At least one polling place is to be appointed by the Electoral Commission for each ward.
- (2) If an area is divided into wards, at least one polling place is to be appointed by the Electoral Commission for all wards, at which a person enrolled in any such ward may vote.
- (3) (Repealed)

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

- (1) The Electoral Commission must appoint one or more places as pre-poll voting offices for the purpose of enabling electors to vote in person before election day.
- (2) The office of the returning officer is taken to be appointed as a pre-poll voting office under subclause (1).

**Note—**

Subdivision 4 of Division 7 of Part 11 (clauses 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 Electoral Commission must on the nomination day or as soon as practicable afterwards publish a notice stating the following:
  - (a) that a poll will be taken in respect of the ward or area,
  - (b) the date of the poll,
  - (c) the full names of the persons who have become candidates and the names under which those persons have been nominated as candidates,
  - (d) the names of the political parties (if any) that must be printed adjacent to the names of the candidates on the ballot-papers,
  - (e) whether the word “Independent” must be printed adjacent to the name of any candidate on the ballot-papers,
  - (f) the location of the polling places where the poll will be taken on election day,
  - (g) the location of the pre-poll voting office or offices and the hours between which and the days on which electors may vote at the pre-poll voting office or offices.
- (2) The Electoral Commission must also notify the matters referred to in subclause (1) (and any other matters that the Electoral Commission determines should be notified) in a newspaper circulating in the area and in a written notice posted at the council's office.
- (3) As soon as practicable after the nomination day, the Electoral Commission must cause a list of those details to be displayed on the Commission's internet website until at least election day.

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

- (1) This clause applies to a claim under section 308A (Grouping of candidates) of the Act.

- (2) A claim must be in writing in the form approved by the Electoral Commission 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 in writing in the form approved by the Electoral Commission delivered or sent to the returning officer so as to reach the returning officer before noon 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 noon on the nomination day there are:

- (a) two or more candidates, not included in a group, for the election, the returning officer must immediately hold a ballot in accordance with clause 303 to determine the order of those candidates' names on the ballot-papers, or
- (b) two or more groups of candidates for the election, the returning officer must immediately hold a ballot in accordance with clause 304 to determine the order of those groups on the ballot-papers.

### **303 Determining the order of ungrouped candidates on ballot-papers**

- (1) A ballot referred to in clause 302 (a) is to be conducted in the following manner:
  - (a) the returning officer must, at the place of nomination 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 Electoral Commission.

(2) Each candidate or an agent of each candidate is entitled to be present at a ballot in accordance with this clause.

### **304 Determining the order of groups of candidates on ballot-papers**

(1) A ballot referred to in clause 302 (b) is to be conducted in the following manner:

- (a) the returning officer must, at the place of nomination 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 Electoral Commission.

(2) Each candidate or an agent of each candidate is entitled to be present at a ballot in accordance with this clause.

### **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 that has been determined by the Electoral Commission.
- (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 clause 302 (a).
- (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 clause 304 (1) (b), 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 subclause (5), on the ballot-papers in the order determined as referred to in clause 304 (1) (a).
- (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 Electoral Commission.
- (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.

**306-308 (Repealed)**

**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 copies certified under his or her hand to be true copies 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 true 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 Electoral Commission 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 clause 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 clause 305.
- (3) A ballot-paper so reproduced or obtained and complying with subclause (2) is as valid as a form printed in accordance with clause 305.

## **Division 7 Postal and other special types of voting**

### **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.

### **314 Postal voting: application**

- (1) **Qualified persons may apply** A person qualified under this Subdivision may apply to the returning officer for a postal ballot-paper and postal voting envelope.
- (2) **Form, completion and witnessing of application** The application:
  - (a) is to be in Form 7, and
  - (b) is to be completed and signed by the applicant, and
  - (c) is to be witnessed as shown on the application.
- (3) **Despatch of application to returning officer** The application:
  - (a) must be delivered or sent (by post or otherwise), or transmitted by facsimile or

email, so as to reach the returning officer between the roll closing date and 5 pm on the fifth day before election day, and

(b) if received by the returning officer within that period, is to be given a number.

(4) **Physical delivery or sending of application** If the application is to be delivered or sent (by post or otherwise) to the returning officer but not transmitted by facsimile or email, the application:

(a) is to be placed by the applicant in an envelope addressed to the returning officer and sealed, and

(b) is to be delivered or sent directly to the returning officer by the applicant (or if the applicant is physically incapable of delivering or sending the application and entrusts it to another person for that purpose, by that person).

(5) **Emailed application** If the application is to be emailed to the returning officer, the application is not validly transmitted by email unless:

(a) an image of the completed application signed by the elector and witness is included in or attached to the email, and

(b) that image includes an image of the actual signatures as appearing on the application.

(6) **Inquiries as to authenticity of application** The returning officer may make such inquiries as he or she thinks fit to confirm the authenticity of an application if he or she considers it appropriate to do so in the circumstances.

**Note—**

Clause 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 clause for a ballot-paper in braille format.

### **315 Registration of general postal voters**

- (1) An elector who is registered as a general postal voter for the purposes of the *Parliamentary Electorates and Elections Act 1912* is taken to be registered as a general postal voter 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 general postal voter under the *Parliamentary Electorates and Elections Act 1912*.
- (3) The elector must be so registered not later than 6 pm on the roll closing date for an election if the applicant is to be treated as a general postal voter for the election.

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

- (1) An elector who duly applies for a postal vote or is registered as a general postal voter is entitled to make a postal vote in the ward or area to which the elector's application or registration relates.
- (2) The Electoral Commission must forward to the returning officer as soon as possible after the nomination day for an election a list of those general postal voters registered under the *Parliamentary Electorates and Elections Act 1912* who are entitled to vote at an election in respect of a ward or area.
- (3) The list, when forwarded under subclause (2), must be accompanied by some indication of the signatures of the voters as those signatures appear on the applications they made for registration as general postal voters.

### **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 returning officer is to:
  - (a) make a record that a ballot-paper is being issued to the elector, and
  - (b) deliver or send to the elector a ballot-paper that is initialled on the front by an election official, and
  - (c) deliver or send to the elector an envelope bearing both the address of the returning officer and a form of declaration in Form 8 on which the returning officer has filled in the full name of the elector, the address of the land to which the elector's voting entitlement relates, the date of the election and the names of the area and the ward (if any) and the number (if any) given to the elector's application or registration as referred to in this Subdivision.
- (2) Ballot-papers and envelopes delivered or sent under this clause to a non-resident postal voter are to be delivered or sent to the residential address of that elector.

#### **Note—**

The Electoral Commission can (under section 296 (6) of the Act) determine a procedure for the notification by the returning officer of election officials as to the issue of postal ballot-papers.

### **318 Postal voting procedure**

- (1) To make a postal vote, an elector is to:
  - (a) show to a witness the ballot-paper and Form 8 declaration delivered or sent by the returning officer under clause 317, and
  - (b) in the presence of the witness, and if the facts on the declaration are correct, sign the declaration in the space provided.

- (2) The witness is to sign the declaration and complete the spaces in it for the address of the witness and the date on which the declaration is signed. The witness is to do those things only if the witness:
  - (a) is at least 18 years old and is not a candidate, or agent of a candidate, for civic office in the area in which the election is being held, and
  - (b) is satisfied as to the elector's identity, and
  - (c) has seen the elector sign the declaration, and
  - (d) knows, from personal knowledge or after reasonable inquiry, that the statements in the declaration are true.
- (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 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, so as to reach the returning officer before 6 pm on the first business 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 without first surrendering the ballot-paper and the declaration envelope to the polling place manager at the polling place.
- (7) However, if the elector makes a declaration in Form 9 that the elector has not received, or has lost, the ballot-paper or the declaration 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 clause 387 as to spoilt ballot-papers and clause 388 as to the assistance of electors.

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

A postal vote that does not reach the returning officer before 6 pm on the first business

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 6 pm on the first business 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.
- (3) (Repealed)

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

### **321 Pre-poll voting qualifications**

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
- (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.

### **322 (Repealed)**

### 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 clauses 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 roll of electors, 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.
- (3) **Written declaration by elector** The elector is then to make a written declaration. The declaration:
  - (a) is to be in Form 10, and
  - (b) is to be printed or written on a ballot-paper envelope, and
  - (c) is to be obtained by the applicant from the pre-poll voting officer, who, before handing it to the applicant, must fill in on the declaration:
    - (i) the name of the area and ward (if any), and
    - (ii) the full name and full address of the elector, and
  - (d) is to be completed and signed by the elector in the presence of the officer, and
  - (e) is to be returned to the officer who is to witness the elector's signature.

**Note—**

Form 10 also includes the declaration to be made by an elector whose name does not appear on the roll of electors.

- (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 clause any of the questions set out in clause 339 that are applicable to the case.
- (5) **Ballot-paper to be handed to elector** If:



(a) the elector answers the questions satisfactorily or no questions are to be put to the elector, and

(b) the elector makes the declaration under subclause (3),

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 roll of electors to show that the elector has received a ballot-paper.

(7) **Ballot-paper to be completed and given to officer** On receiving a pre-poll ballot-paper, the elector is:

(a) to mark his or her vote on the ballot-paper in accordance with the directions on it in view of the pre-poll voting officer but so that the officer is unable to see the vote, and

(b) to fold the ballot-paper so that the vote cannot be seen, and then return the ballot-paper so folded to the officer.

(8) **How ballot-paper to be dealt with by officer** When a ballot-paper has been so returned to the pre-poll voting officer, the officer must, in the presence of the elector:

(a) enclose the ballot-paper in the envelope bearing the elector's declaration and seal the envelope, and

(b) put the sealed envelope in the pre-poll ballot-box.

### **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 form of declaration 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 form of declaration for cancellation.

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

(1) The pre-poll voting office for the returning officer is to be used for the purpose of enabling electors to vote in person before election day in accordance with this Subdivision during the ordinary office hours of the council between the twelfth and second day before election day, between 9 am and 6 pm on the day preceding election day and during such further period on any such day as the Electoral Commission may determine.

- (2) In addition, one or more other pre-poll voting offices are to be used for the purpose of enabling electors to vote in person before election day in accordance with this Subdivision between such hours and on such day or days, being between the twelfth and first days before election day, as the Electoral Commission may determine for that office.
- (3) The pre-poll voting officer at each pre-poll voting office is to ensure that a copy of each candidate information sheet is displayed at the pre-polling voting office.
- (4) Nothing in this clause prevents the offices referred to in this clause from being used for other purposes in connection with the election.

**Notes—**

- 1 The Electoral Commission can (under section 296 (6) of the Act) determine a procedure for the notification by the returning officer of election officials (and vice versa) as to the issue of pre-poll ballot-papers.
- 2 See clause 387 as to spoilt ballot-papers and clause 388 as to the assistance of electors.

## **Subdivision 3 Declared institution voting**

### **327 Declared institutions**

- (1) The Electoral Commission may, not later than on the nomination day, declare an institution in an area to be a declared institution for the purpose of enabling permanent or temporary residents of the institution who are electors of the area to vote in person before election day.
- (2) An institution may be declared under this clause only if it is a nursing home, hospital or similar institution in which a polling place has not been appointed.

### **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 one or more of the fifth, fourth and third days before election day, 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 subclause (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 clause 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 roll of electors, 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.
- (4) **Written declaration by elector** The elector is then to make a written declaration. The declaration:
  - (a) is to be in Form 10, and
  - (b) is to be printed or written on a ballot-paper envelope, and

- (c) is to be obtained by the elector from the pre-poll voting officer, who, before handing it to the elector, must fill in on the declaration:
  - (i) the name of the area and ward (if any), and
  - (ii) the full name and address of the elector, and
- (d) is to be completed and signed by the elector in the presence of the officer, and
- (e) is to be returned to the officer who is to witness the elector's signature.

**Note—**

Form 10 also includes the declaration to be made by an elector whose name does not appear on the roll of electors.

- (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 clause 339 that are applicable to the case.
- (6) **Ballot-paper to be handed to elector** If:
  - (a) the elector answers the questions satisfactorily or no questions are to be put to the elector, and
  - (b) the elector makes the declaration under subclause (4),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 roll of electors to show that the elector has received a ballot-paper.
- (8) **Ballot-paper to be completed and given to officer** On receiving the ballot-paper, the elector is:
  - (a) to mark his or her vote on the ballot-paper in accordance with the directions on it in the view of the pre-poll voting officer but so that the officer is unable to see the vote, and
  - (b) to fold the ballot-paper so that the vote cannot be seen, and then return the ballot-paper so folded to the officer.
- (9) **How ballot-paper to be dealt with by officer** When a ballot-paper has been so returned to the pre-poll voting officer, the officer must, in the presence of the elector:
  - (a) enclose the ballot-paper in the envelope bearing the elector's declaration and seal the envelope, and
  - (b) put the sealed envelope in the declared institutions ballot-box.

### **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 booths in convalescent homes, hospitals or similar institutions**

- (1) Mobile polling may take place for the purposes of the Act in any convalescent home, hospital or similar institution in accordance with section 87A of the *Parliamentary Electorates and Elections Act 1912*.
- (2) Section 87A of the *Parliamentary Electorates and Elections Act 1912* applies to voting at a mobile polling booth under the Act in any convalescent home, hospital or similar institution in the same way as it applies to voting at a mobile polling booth under the *Parliamentary Electorates and Elections Act 1912*.
- (3) No offence under the *Parliamentary Electorates and Elections Act 1912* (as applied by this clause) applies under this Regulation.

### **332A Mobile booths for pre-poll voting in remote local government areas**

- (1) **Electoral Commission's functions** The Electoral Commission:
  - (a) may declare an area to be a remote area for the purposes of this clause, and
  - (b) may determine the places in that area that a team will visit for the purposes of this clause, 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 clause.
- (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 Electoral Commission as team leader. The team leader is to exercise the functions of the pre-poll voting officer under the following provisions of this clause.
- (3) **Visits and variation of places, days or times** A team must make a visit or visits as notified under subclause (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 Electoral Commission.

(4) **Failure to visit does not invalidate election result** Any failure by a team to make a visit in accordance with this clause 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 clause 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 clause, and

(c) for purposes of, and in connection with, the taking of votes under this clause:

(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) clause 321 regarding the qualifications to vote before election day,

(ii) clause 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 clause, 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 clause, 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 clause to other provisions** In relation to an area declared by the Electoral Commission to be a remote area, and without affecting subclause (5) (d), the provisions of this clause 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 8 Voting on election day**

### **334 (Repealed)**

### **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 Electoral Commission 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 clause 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 the Electoral Commission.

### **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 clause 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, by instrument in writing signed by the candidate, 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) A scrutineer, on presentation to an election official of his or her instrument of appointment as scrutineer, is entitled to be present in accordance with his or her appointment under this clause.
- (4) A scrutineer must, on demand by an election official, produce his or her instrument of appointment as scrutineer for inspection.
- (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 clause 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 subclause (6).

### **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 roll.
- (2) The election official must check that the name given by the person is on the roll in force for the ward or area for which the polling place has been appointed.
- (3) The election official may (and must if required by a scrutineer) require any such person to sign his or her name or make his or her mark in a book to be kept for that purpose.
- (4) The election official may (and must if required by a scrutineer) put to the person, before giving the person a ballot-paper, questions in the following form:
  1. Are you the person whose name appears as ..... [*name*] in the roll of electors for ..... ward of ..... area?
  2. What is your date of birth?
  3. Are you:



- (a) an Australian citizen, or
  - (b) a British subject (other than an Australian citizen) who was on a Commonwealth or State of New South Wales electoral roll on 25 January 1984?
4. Are you disqualified from voting at this election by section 266 of the *Local Government Act 1993*?
5. Have you already voted at this election?
- (5) A person who:
- (a) fails to satisfy a requirement under subclause (1) or (3), or
  - (b) does not answer “yes” to questions 1 and 3, and “no” to questions 4 and 5, in subclause (4), or
  - (c) whose answer to question 2 in subclause (4) does not correspond to the person’s date of birth as appearing on the roll of electors,
- must not be given a ballot-paper and must not be allowed to vote.
- (6) However, if a request for a person’s place of living not to be included in a roll of electors has been granted under section 739 of the Act, the person need not indicate a place of living in response to a requirement under subclause (1) but instead the person is to make a declaration of residence on an envelope in Form 12.
- (7) This clause 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 roll of electors if he or she satisfies the election official of his or her identity as the person referred to in the roll, or
  - (b) because the person’s name is not on the roll if he or she complies with section 305 of the Act.

#### **340 Voting by elector with confidential address**

- (1) An elector who has made a declaration of residence under clause 339 is to mark and fold the ballot-paper and return the folded ballot-paper to an election official.
- (2) In the presence of the elector and any scrutineers present, the election official is to enclose the folded ballot-paper in the envelope containing the declaration of residence and addressed to the returning officer and seal the envelope.
- (3) The election official is to deliver or send the envelope to the returning officer.
- (4) The returning officer is to examine the declaration on the unopened envelope and ascertain from the Electoral Commission or the general manager whether the

residence specified in the declaration is the residence specified in the appropriate request (as affected by any change of residence annotated on the request) under section 739 of the Act.

- (5) If the declaration is in order and the residence is the appropriate one, 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 the ballot-box for section 305 votes.
- (6) If the declaration is not in order, or the residence is not the appropriate one, the returning officer is to leave the envelope containing the ballot-paper unopened.

### **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 an appropriate notation on 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.

### **343 Elector whose name is not on roll (section 305 votes)**

- (1) An elector who claims to vote under section 305 of the Act on election day, after making the declaration required by that section and receiving a ballot-paper, is to mark the ballot-paper and fold it to conceal the vote marked on it and return it so folded to the polling place manager.
- (2) The polling place manager on receiving the ballot-paper must, in the presence of the elector 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.
- (3) The polling place managers are each to make a list of section 305 votes. On it each polling place manager is to note:
  - (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 section 305 of the Act, 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).

### **344 Voting if name already marked on roll**

- (1) If an elector claims to vote at a polling place, but the roll of electors has already been marked to show that the elector has received an ordinary, postal or pre-poll ballot-paper, the elector is to be given a ballot-paper if he or she answers the questions set out in clause 339 (4) in the manner specified in clause 339 (5) and a declaration has been completed in Form 13.
- (2) The elector, after marking his or her ballot-paper, is to fold it and deliver it to an election official.
- (3) The official is (in the presence of the elector) to enclose the folded ballot-paper (without unfolding it) in an envelope bearing (or containing) the declaration of the elector required by this clause, and seal the envelope. The official is then to put the envelope in the ballot-box.
- (4) The official is to enter on a list of tendered votes kept at the polling place the giving of a ballot-paper to the elector under this clause.

**Note—**

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

## **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) Despite subclause (1), a ballot-paper of an elector at an election in which only one candidate is to be elected is not informal merely because a tick or a cross has been placed in one square and the other square or squares have been left blank. In such a case the tick or the cross is to be treated as a first preference.
- (3) (Repealed)
- (4) Despite subclause (1), a ballot-paper of an elector at an election is not informal merely because a preference (other than a first preference) has been repeated or

omitted so long as the ballot-paper shows at least the minimum number of preferences required by the directions.

- (5) Despite subclause (1), a ballot-paper of an elector at an election is not informal merely because it has not been initialled on the front by an election official, so long as it bears the mark referred to in clause 305 (2).
- (6) Despite subclause (1), a ballot-paper of an elector at an election is not informal by virtue of the existence of an unnecessary mark on the ballot-paper if, in the opinion of the returning officer, the elector's intention is clearly indicated on the ballot-paper.
- (6A) Despite subclause (1), a ballot-paper is not informal 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. In such a case, each such number, tick or cross is taken to have been placed within the relevant square.
- (7) Nothing in subclause (2) authorises any person to encourage a voter to place a tick or a 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.

**346 Persons present at scrutiny and count**

The Electoral Commissioner or persons authorised by the Electoral Commission, 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 (Repealed)**

**348 Initial scrutiny of ballot-papers and counting of votes**

- (1) On the close of the poll at an election each polling place manager must with the assistance of the election officials, and in the presence of the scrutineers, then present and on duty at the polling 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, section 305 votes and tendered 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 declarations under this Part.
- (2) The polling place manager must send to the returning officer returns in Form 14:
- (a) stating the details of those counts, and
  - (b) signed by:
    - (i) the polling place manager and another election official, and
    - (ii) any scrutineer who desires to sign the returns.

### **349 Sending ballot-papers to returning officer**

- (1) The polling place manager must then, in the presence of the witnesses referred to in clause 348 (1), make up:
- (a) in one parcel the ballot-papers classed as formal and the ballot-papers classed as informal, and
  - (b) in a second parcel:
    - (i) the envelopes containing postal votes, the envelopes containing section 305 votes and the envelopes containing tendered votes, and
    - (ii) the ballot-papers that have not been used, and
    - (iii) the cancelled postal ballot-papers and forms of declaration, and
    - (iv) the spoilt ballot-papers, and
    - (v) the list of section 305 votes and the list of tendered votes, and
  - (c) in a third parcel the certified copies of the rolls supplied to the polling place manager, signed by the polling place manager, and all books, rolls and papers (except the ballot-papers and the lists of ballot-papers) kept, used, and received by the polling place manager in connection with polling.
- (2) The polling place manager is to do the following:
- (a) seal the parcels,
  - (b) permit any of the scrutineers who wish to do so to affix their seals to the parcels,
  - (c) endorse the parcels 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 parcel,
  - (e) deliver or send the parcels 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 parcels 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 of ballot-papers in sealed envelopes**

- (1) **Postal votes** The returning officer must on election day (at any time after 8 am) produce the applications for postal votes, produce the list and signature indications of general postal voters forwarded to the returning officer, and open the ballot-boxes containing postal votes received by the returning officer and take all the envelopes from them.
- (2) Postal votes received after the close of the poll but before 6 pm on the first business day following election day (including those delivered to polling place managers on election day under clause 318 (5)) are to be dealt with in the same way as postal votes received before the close of the poll.
- (3) The returning officer is then to do the following or have the following done:
- (a) count the sealed ballot-paper envelopes unopened and record the count,
  - (b) check the names on the envelopes against the roll of electors and, if the Form 8 declaration on the envelope has been duly signed and witnessed, mark the roll of electors in the manner determined by the Electoral Commission,
  - (c) compare the signature of the elector on each postal vote declaration with the signature of the applicant on the correspondingly numbered application for a postal vote (or the signature of the applicant for registration as a general postal voter), allow the scrutineers to inspect both signatures, and examine each declaration as to its formality or informality,
  - (d) if the returning officer is not satisfied that the signature of the elector on the declaration is that of the applicant who signed the application or that the declaration is formal—mark, initial and keep apart unopened the sealed ballot-paper envelope on which the declaration appears,

- (e) if the returning officer is satisfied that the signature of the elector on the declaration is that of the applicant who signed the application and that the declaration is formal—turn the sealed ballot-paper envelope so that the declaration is face downwards, then open the envelope (without damaging the writing on it) and take out the ballot-paper and, without inspecting or unfolding it or allowing any other person to do so, place it in a securely fastened ballot-box for further scrutiny,
- (f) after dealing with all the envelopes and ballot-papers in accordance with paragraphs (d) and (e), open the ballot-box, take out the ballot-papers, unfold and scrutinise them and reject the informal ones.

(4) **Pre-poll votes, declared institution votes and section 305 votes** The returning officer must:

- (a) on election day (at any time after 8 am) produce all the sealed envelopes containing pre-poll votes and declared institution votes (including section 305 votes cast before election day), and
- (b) on the close of poll produce all the sealed envelopes containing section 305 votes cast on election day,

and deal with them in accordance with subclause (5).

(5) The returning officer is to do the following or have the following done in relation to the envelopes referred to in subclause (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 declaration is in order and the elector is entitled to vote,
- (c) in the case of section 305 votes—check the names on the envelopes against the roll of electors and, if an elector's name is on the roll of electors, mark the roll in the manner determined by the Electoral Commission,
- (d) if the declaration is in order and it appears to the returning officer that the elector is 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,
- (e) if the declaration is not in order, or it appears to the returning officer that the elector is not entitled to vote, the returning officer is to leave the envelope containing the ballot-paper unopened,

(f) after dealing with all the envelopes and ballot-papers in accordance with paragraphs (d) and (e), open the ballot-box, take out the ballot-papers, unfold and scrutinise them and reject the informal ones.

(6) **Tendered votes** The returning officer must on the close of the poll produce all envelopes containing tendered votes and do the following or have the following done:

- (a) count the number of envelopes containing tendered votes for each polling place,
- (b) in the presence of the scrutineers examine the declarations on the envelopes and make such inquiries as the returning officer considers necessary as to whether the persons who signed the declarations are entitled to vote,
- (c) if the returning officer is not satisfied that the person who signed the declaration is entitled to vote or that the declaration is duly witnessed, keep apart and unopened the envelope on which the declaration appears,
- (d) if the returning officer is satisfied that the person who signed the declaration is entitled to vote and that the declaration is duly witnessed, turn the envelope so that the declaration is face downwards, then open the envelope (without damaging the writing on it) and take out the ballot-paper and, without inspecting or unfolding it or allowing any other person to do so, place it in a securely fastened ballot-box for further scrutiny,
- (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.

### **351 Finalising the count**

(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 tendered votes and section 305 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 Electoral Commission 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 clause 356 will be available for inspection at the office of the relevant council, and
  - (iii) that the information contained in a notice under clause 356 (5) is to be published on the Electoral Commission's internet 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 central counting office administered by the Electoral Commission to be counted in accordance with arrangements approved by the Electoral Commission.

### **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 Electoral Commission may direct the returning officer to recount any ballot-papers used in the election.
- (2) A request under subclause (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 written notification of the result of the count has been delivered or sent to the candidates.

- (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:
  - (a) a request is received under subclause (1) (a) and the candidate has paid to the returning officer, on behalf of the council, a deposit to cover the cost of the recount and the ballot-papers referred to in the request have not already been recounted, or
  - (b) a direction is received in accordance with subclause (1) (b), or
  - (c) the returning officer in any case believes it necessary.
- (4) The deposit is to be determined by reference to a scale of charges fixed by the Electoral Commission before election day.

### **354 Who pays for the recount?**

- (1) If a recount of ballot-papers is conducted under clause 353 (3) (b) or (c), the council is to pay for the recount.
- (2) If a recount of ballot-papers is conducted under clause 353 (3) (a) and the recount results in an alteration in the candidates who are elected, the deposit referred to in that paragraph is to be refunded to the candidate.
- (3) If a recount of ballot-papers is conducted under clause 353 (3) (a) and the recount does not result in an alteration in the candidates who are elected, the expense of the recount is to be paid out of the deposit and any remainder is to be refunded to the candidate, and any shortfall paid by the council.

### **355 Result of recount**

Immediately after the completion of a recount of ballot-papers, the returning officer must notify the Electoral Commission of the result of the recount.

### **356 Declaring the election**

- (1) The Electoral Commission 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 Electoral Commission 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 Director-General, the Secretary of the Local Government and Shires Associations of New South Wales, and the relevant general manager.
- (c) (Repealed)
- (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.
- (5) The Electoral Commission must cause the information in the declaration to be published on the Electoral Commission's internet website for at least one month.
- (6) The council must cause the information in the declaration to be published on the council's internet website, or provide a link on its website to the relevant part of the Electoral Commission's website, for at least one month.
- (7) The Electoral Commission must insert, in a newspaper circulating generally in the State or another newspaper circulating in the relevant area or both, a notice stating:
  - (a) the names of the candidates declared elected, and
  - (b) the ward or area for which they have been elected, and
  - (c) that detailed results are available on the Electoral Commission's internet website and for inspection at the office of the relevant council, and
  - (d) such other information relating to the election as the Electoral Commission thinks fit.
- (8) A notice under subclause (7) may relate to one or more areas.

## **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 a how-to-vote card, poster or advertisement containing electoral matter, or anything else containing electoral matter.

**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 roll 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.

**356C Non-complying electoral material—additional provisions regarding how-to-vote cards**

- (1) **Application of clause** Without limiting clause 356B, electoral material consisting of or containing a how-to-vote card contravenes this Subdivision if the card does not comply with this clause.
- (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 clause 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 clause 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 clause 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 clause 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—**

Subclause (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 clause 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 clause 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 or county council, 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.

**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 clause 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 subclause (2), a person is not guilty of an offence under this clause 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) Subclauses (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 or county council.

**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, and
- (b) 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, subclause (1) does not require that name



and address to be shown separately on the material itself.

### **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
- (b) the breach was not intended, or was not likely, to mislead an elector in or in relation to the casting of his or her vote, 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.

(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

(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 clause 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 Electoral Commission 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 subclause (1), unless a notice to the contrary is displayed under clause 356U. If such a notice is displayed, the grounds are taken to be part of the pre-poll voting office for the purposes of subclause (1).

### **356K Canvassing on pre-poll voting days**

(1) **Canvassing in 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 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 pre-poll voting office** A person must not contravene this subclause. This subclause 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 any distance away from the 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.

Maximum penalty: 5 penalty units.

(3) **Canvassing includes distributing electoral material** Without limiting the generality of subclause (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 clause 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 Electoral Commission 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 clause, unless a notice to the contrary is displayed under clause 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 clause.

## **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 clause 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 clause 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 clause 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 on election days**

- (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.

- (2) **Posters in grounds of enclosure of polling place** Without limiting subclause (1), a person must not, on election day, display or cause to be displayed any poster exceeding 8,000 square centimetres in area within the grounds of an enclosure in which a building used for polling is situated.

Maximum penalty: 3 penalty units.

- (3) **Posters on boundary of enclosure of polling place** A person must not, on election day, display or cause to be displayed any poster exceeding 8,000 square centimetres in area on the outer wall, fence or other boundary of the grounds of an enclosure in which a building used for polling is situated.

Maximum penalty: 3 penalty units.

- (4) **Application of this clause 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 Electoral Commission 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 subclause (1), unless a notice to the contrary is displayed under clause 356U. If such a notice is displayed, the grounds are taken to be part of the polling place for the purposes of subclause (1), and subclause (2) does not apply.

### **3560 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 subclause. This subclause 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 subclause (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 clause 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 Electoral Commission 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 clause, unless a notice to the contrary is displayed under clause 356U. If such a notice is displayed, the grounds are taken to be part of the polling place for the purposes of this clause.

## **Subdivision 6 Registration of electoral material**

### **356P Application for registration of electoral material**

- (1) **Application for registration may be made** For the purposes of clause 356M, an application may be made to the Electoral Commission (in a form approved by the Commission) 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 Commission may allow the draft or sample to be altered or replaced during the period specified in subclause (4) before agreeing to registration.
- (7) **Preliminary advice** A person authorised by subclause (2) or (3) to apply for registration of electoral material may, during the period specified in subclause (4), apply to the Electoral Commission (in a form approved by the Commission) for preliminary advice as to whether particular electoral material may be registered.
- (8) The Electoral Commission 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 of application** An application under this clause must be signed by the applicant and may be delivered or sent (by post or otherwise) or may be transmitted by facsimile or email.
- (10) An application is not validly transmitted by email unless:
  - (a) an image of the completed application signed by the applicant is included in or attached to the email, and
  - (b) that image includes an image of the actual signature as appearing on the application.

### **356Q Consideration of application for registration**

- (1) **Complying material must be registered** The Electoral Commission must register the electoral material if satisfied that registration is not prohibited by this Subdivision.
- (2) **Refusal for non-complying application** However, the Electoral Commission 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 Commission must not register the electoral material if it appears to the Electoral Commission 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, and

- (ii) the name of the printer and the street address at which it was printed, or
- (d) in the case of an application for registration purporting to be made on behalf of an entity referred to in clause 356P (2) or (3)—the application was not made by a person authorised by the relevant subclause 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 clause 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 subclause 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 subclause (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 Commission may make such inquiries as the Commission thinks fit to confirm the authenticity of:
- (a) an application, or
  - (b) any consent referred to in subclause (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 a form approved by the Electoral Commission) 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.

(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 Commissioner or by a person authorised by the Electoral Commission 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 clause 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 clause 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 clause and referring to an election, constitutional referendum or council poll for an area, and the relevant certificate of registration, must be available for inspection:

(a) at the office of the returning officer for the area, during the hours of polling on election day and on all days to which the polling is adjourned, and

(b) at such other places (if any), and during such of those hours, as the Electoral Commission determines,

at the request of any person enrolled for the area or of any scrutineer.

### **356S Revocation of registration or imposition of condition on registration**

(1) If the Electoral Commission is satisfied that electoral material was erroneously registered, the Commission 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**

### **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 Electoral Commission, 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 clause. This clause 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.

### **356U Notice applying provisions to grounds of polling place**

- (1) This clause applies for the purposes of clauses 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 Electoral Commission 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 Electoral Commission, 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—**

Clauses 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 clause applies in relation to an election under clause 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 Commission 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 clause by virtue of anything done in accordance with clause 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 clause 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 clause 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 clause 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 who unlawfully remains in a polling place after being requested by an election official to leave the polling place is guilty of an offence.
- (3) This clause does not prevent:
  - (a) the Electoral Commission, 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 within a polling place, pre-poll voting office, declared institution or mobile booth, while polling is in progress:
  - (a) interfere with or influence an elector, or
  - (b) communicate with any person except as necessary to carry out the scrutineer's functions.
- (2) A scrutineer must obey the lawful directions of an election official.
- (3) A scrutineer does not breach subclause (1) merely by wearing the badge or emblem of a candidate or political party.

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 Electoral Commission or required or authorised to do so by or under any legislation or direction of a court.

Maximum penalty: 10 penalty units.



### **375 Bribery**

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 147 of the *Parliamentary Electorates and Elections Act 1912*.

Maximum penalty: 100 penalty units.

### **376 Treating**

A candidate at an election must not, in relation to an election under the Act, do any of the things set out in section 149 of the *Parliamentary Electorates and Elections Act 1912*.

Maximum penalty: 100 penalty units.

### **377 Intimidation**

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 151 of the *Parliamentary Electorates and Elections Act 1912*.

Maximum penalty: 100 penalty units.

### **378-382 (Repealed)**

## **Division 11 Miscellaneous**

### **383 Adjournment of poll**

- (1) When the proceedings for taking the poll at an election are interrupted or obstructed at a polling place by a riot or open violence, the returning officer is to adjourn the taking of the poll there to the following day. If necessary the returning officer is to adjourn the poll from day to day until the interruption or obstruction has ceased.
- (2) If the polling place manager fails to open the polling at a polling place for 30 minutes after the time when the polling should have started or if he or she becomes incapable of performing his or her duties after polling has opened, and remains so incapable for a period of 30 minutes or more, the other election officials present are to act for the polling place manager and may exercise his or her functions.
- (3) If for any reason other than riot or open violence the polling has not been opened at a polling place on the election day or if the polling has been opened but from the absence of necessary forms, documents or materials the poll cannot be proceeded with, the returning officer is to adjourn the polling there to a day not later than 21 days following the election day. The Electoral Commission is to cause public notice to be given immediately of the new day.

### **384 Notice of adjournment to Electoral Commission**

- (1) A returning officer who adjourns the taking of a poll must give immediate notice of the adjournment to the Electoral Commission.
- (2) In the case of an adjournment at any polling place, the initial scrutiny and count under clause 348 at the polling place and the completion of the count under clause 351 in the ward or area where the poll has been adjourned are not to proceed until the adjourned poll has been finally closed.

### **385 Votes at adjourned poll**

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.

### **386 Postponed and adjourned elections**

In the case of an election postponed under section 288 of the Act or adjourned under clause 383:

- (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 6 pm on the first business day following the new date of the election are to be produced by the returning officer, along with the applications for them and the list and signature indications of general postal voters forwarded to 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**

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.

### **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 Electoral Commission may, on application made to the Commission 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 Commission under this clause may be made orally to an officer authorised by the Commission to receive such applications or in writing addressed to the Commission. 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 clause 314 for a postal ballot-paper and postal voting envelope (even if the application was made orally), and

(d) make the application:

(i) if made orally—during the period starting with the thirtieth day before nomination day and ending at 5 pm on nomination day, or

(ii) if made in writing—so as to reach the Electoral Commission during that period.

(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 Electoral Commission may make such inquiries as the Commission thinks fit to confirm the authenticity of an application if the Commission considers it appropriate to do so in the circumstances. The Commission may decline to act on an application if not satisfied as to its authenticity.

(6) **Voting directions on ballot-paper** The Electoral Commission 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 clause, and

(b) the Electoral Commission 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 clause, 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 Electoral Commission 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 Commission thinks appropriate in the circumstances.

(9) **Ballot-paper not informal because of format** A ballot-paper is not informal under clause 345 (1) (c), or under clause 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 Electoral Commission is not obliged to arrange for a ballot-paper to be provided in braille format to an elector under this clause 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 Commission is to notify the elector as soon as possible that the ballot-paper will not be provided in braille format.

(11) **Limits on Electoral Commission's role** The Electoral Commission is not obliged to provide or arrange the provision of:

- (a) ballot-papers in braille format otherwise than as provided in this clause, or
- (b) ballot-papers in any format other than as specified in this or any other clause of this Regulation.

(12) **Meaning of braille in this clause** References in this clause to braille are references to braille in a form or version determined by the Electoral Commission.

### **389 Signature to electoral paper**

- (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.

### **390 Check on double-voting**

The Electoral Commission is to have the rolls checked to determine which electors' names (if any) have been marked more than once.

### **391 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. The endorsement is to specify the contents of each parcel 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 parcels to the Electoral Commission.
- (4) The Electoral Commission must have the parcels kept securely for 6 months, and then destroyed, unless the Electoral Commission decides to keep them longer than 6 months.
- (5) (Repealed)
- (6) The returning officer is to detach the statistical information sheet from each nomination paper before the papers are parcelled under this clause. The returning officer is then to forward the sheets to the general manager of the relevant council. The general manager must treat the information on the sheets confidentially and the information is to be made available only to the Director-General.

### **392 Access to election materials**

If a court so directs, or the Electoral Commission so decides, or any legislation so requires or permits:

- (a) the Electoral Commission is to allow any person to inspect any of the election materials kept under clause 391 (4), except the sealed parcels of marked ballot-papers, or
- (b) the general manager is to allow any person to inspect any of the election materials kept under clause 391 (6).

### **392A Section 305 votes—prescribed form of declaration**

For the purposes of section 305 (c) of the Act, the prescribed form of declaration is:

- (a) in the case of a person who is voting by pre-poll voting (including pre-poll voting at a declared institution)—Form 10 written or printed on an envelope, or

(b) in any other case—Form 11 written or printed on an envelope.

### **393 Application of [Election Funding Act 1981](#)**

The manner in which the [Election Funding Act 1981](#) is to be applied in relation to elections under the Act is modified or provided for in Schedule 6.

**Note—**

Under section 296 (6) of the [Local Government Act 1993](#), the Electoral Commission may determine any matter not provided for by that Act or the regulations made under it. Such determination might relate to some of the areas originally provided for under the repealed [Local Government Act 1919](#) (but now not covered in detail under the [Local Government Act 1993](#)), such as:

- (a) the provision, inspection and security of ballot-boxes, and
- (b) the provision and security of rolls and ballot-papers.

## **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 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 clause 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 2 to the [Road Transport \(General\) \(Penalty Notice Offences\) Regulation 2002](#)) 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 subclause (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 subclause (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 (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 clause.
- (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 subclause (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 subclause (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 subclause (1), if an action referred to in subclause (5) (b) or (c) is substantially the same as an action referred to in subclause (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 (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 Director-General, 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 Director-General, 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 Director-General), the persons who, on a date determined by the Boundaries Commission or Director-General, 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 Director-General their desire to be included in the list prepared for the area under this clause.
- (2) The persons whose names are contained in a list prepared under this clause 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 (sections 252 and 254A)**

### **403 Payment of expenses and provision of facilities**

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.

### **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 subclause (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 clause:

**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 clause, 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 subclause (2), the relevant award provisions that apply by force of this clause 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 clause applies to an employee of a council whether or not the employee was a person to whom the award applied.
- (5) Nothing in this clause affects any leave entitlement of a member of the senior staff of a council under the member's employment contract.
- (6) Nothing in this clause 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.

## **Division 6 Winding up of Cudgegong (Abattoir) County Council (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 6 of Part 4 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 clause, **private person** has the same meaning as in section 400B (2) of the Act.

**409 Transitional arrangement relating to public-private partnership proposals originating after 28 June 2002**

(1) If a proposal to carry out a project under a public-private partnership originated on or after 28 June 2002 but the relevant council did not, before the commencement of this clause, resolve to enter into a public-private partnership to carry out the project, the assessment of the project that is required to be provided by the council under section 400F of the Act is taken to have been prepared in accordance with the PPP guidelines. Accordingly, the general manager of the council is not, in any such case, required to certify that the project assessment has been prepared in accordance with the PPP guidelines.

(2) For the purposes of subclause (1), a proposal to carry out a project under a public-private partnership is taken to have originated when the relevant council resolved to investigate the proposed project and to develop the proposal with other parties.

**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 6 of Part 4 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 clause, **private person** has the same meaning as in section 400B (2) of the Act.

## Division 8 Bathing control notices (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 clause:

**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 Director-General 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 section 694

Any offence for which a penalty notice may for the time being be served under section 15 of the *Road Transport (General) Act 1999* or section 183 of the *Road Transport (General) Act 2005* by a Class 12 officer referred to in Schedule 1 to the *Road Transport (General) (Penalty Notice Offences) Regulation 2002* is declared to be a parking or related offence for the purposes of section 694 of the Act.

**Note—**

The *Road Transport (General) (Penalty Notice Offences) Regulation 2002* 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 clause, 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 (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.

## **Part 14 Savings and transitional provisions**

### **414 General saving**

Any act, matter or thing that, immediately before the repeal of any of the following Regulations, had effect under the Regulation concerned continues to have effect under this Regulation:

- (a) *Local Government (Approvals) Regulation 1999*,
- (b) *Local Government (Elections) Regulation 1998*,
- (c) *Local Government (Financial Management) Regulation 1999*,
- (d) *Local Government (General) Regulation 1999*,
- (e) *Local Government (Meetings) Regulation 1999*,
- (f) *Local Government (Orders) Regulation 1999*,
- (g) *Local Government (Rates and Charges) Regulation 1999*,
- (h) *Local Government (Savings and Transitional) Regulation 1993*,
- (i) *Local Government (Tendering) Regulation 1999*,
- (j) *Local Government (Water Services) Regulation 1999*.

### **415 Inspectors**

A person who, immediately before the repeal of the *Local Government (Approvals) Regulation 1999*, was an inspector for the purposes of that Regulation is taken to be an inspector for the purposes of this Regulation.

### **416 Pending and current elections**

If notice of an election or by-election was given under the *Local Government (Elections) Regulation 1998* before the repeal of that Regulation, the election or by-election concerned is to be conducted as if that Regulation, and not Part 11 of this Regulation,

were in force.

#### **417 Determinations by councils of councillor numbers for the purposes of September 2008 elections**

The change of date for the ordinary elections of councillors effected by the *Local Government Amendment (Election Date) Act 2008* does not affect the validity of an otherwise valid determination made by a council under section 224 (2) of the Act of the number of its councillors for the following term of office.

### **Schedule 1 Standards relating to approvals**

(Clauses 13 and 16)

#### **Part 1**

##### **1-14 (Repealed)**

#### **Part 2 Standards for water supply, sewerage and stormwater drainage work**

##### **15 Compliance with the Plumbing and Drainage Code of Practice**

Water supply work, sewerage work and stormwater drainage work must comply with the *Plumbing and Drainage Code of Practice* except where otherwise provided in the Act or this Regulation.

##### **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 subclause (2), and
  - (b) a separate water meter to measure the water supply to those premises.
- (5) A house service pipe may be laid at a depth less than that specified in the Plumbing and Drainage Code of Practice if authorised in writing by the council.

#### **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 Director-General of the Department of Energy, Utilities and Sustainability or complies with the Manual of Authorization Procedures.
- (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 Director-General of the Department of Energy, Utilities and Sustainability or complies with the Manual of Authorization Procedures.

#### **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.

## **20 Requirements as to water closet suites**

- (1) A water closet suite must not be installed unless it complies with subclause (2) or is a type approved under subclause (3).
- (2) A water closet suite must:
  - (a) have a cistern with a maximum flushing volume of at least 6 litres, and
  - (b) if the suite is to be installed in a class 1 or class 2 building:
    - (i) the cistern must be of the dual flushing kind, and
    - (ii) the suite must satisfy the requirements of the Manual of Authorization Procedures.

However, a water closet suite also complies with this subclause if it is to be connected to a soil stack and has a cistern with a flushing volume of at least 4 litres.

- (3) The Director-General of the Department of Energy, Utilities and Sustainability may approve in writing a type of water closet suite that:
  - (a) has a different maximum flushing capacity from that referred to in subclause (2) (a), or
  - (b) in the case of a suite that is to be installed in a class 1 or class 2 building, does not satisfy the requirements of subclause (2) (b) (ii).

### **Note—**

A **soil stack** is a vertical sewer pipe located in a multi-storey building.

## **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 Director-General of the Department of Energy, Utilities and Sustainability,

or

(b) under the Manual of Authorization Procedures.

- (2) If an inconsistency arises under subclause (1), the authorisation of the Director-General of the Department of Energy, Utilities and Sustainability prevails.

## **Schedule 2 Standards enforceable by orders**

(Clauses 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 1991](#) for each person.

**Note—**

On the commencement of this Regulation, the relevant provision was clause 22 of the [Public Health \(General\) Regulation 2002](#).

#### **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 subclause (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 subclauses (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 subclause (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 subclauses (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 subclause (3) (e).

**Note—**

The following standards also apply under other legislation as at the commencement of this Regulation:

Body preparation room—clause 6 of the *Public Health (Disposal of Bodies) Regulation 2002*.

Waste disposal—clause 7 of the *Public Health (Disposal of Bodies) Regulation 2002*.

Vehicles—clause 8 of the *Public Health (Disposal of Bodies) Regulation 2002*.

## **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 subclause (1).

#### **18 Swine not to be kept near certain premises**

- (1) Without limiting clause 1, 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 clause 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 subclause (1)) must not be kept within 30

metres of any building referred to in subclause (1).

- (3) The floors of poultry houses must be paved with concrete or mineral asphalt underneath the roosts or perches. However, this subclause 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 clause 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 clause 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 Director-General of the Department of Health).
- (4) If the Director-General of the Department of Health has given (and not withdrawn) written approval of a method of disposal of human waste different from the method specified in subclause (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 Director-General of the Department 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 Director-General of the Department 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 Director-General of the Department 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 clause does not apply where the sanction of the Director-General of the Department 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 clause 22.

## **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 3 Form of return—disclosure of interest

(Clauses 180–182 and 192)

*Local Government Act 1993*

### Disclosures by Councillors and Designated Persons Return

- 1 The pecuniary interests and other matters to be disclosed in this return are prescribed by Part 8 of this Regulation.
- 2 If this return is the first return required to be submitted by you after attaining the position of councillor or designated person, do not complete Parts C, D and H of the return. All other Parts of the return should be completed with appropriate information as at the return date, that is, the date on which you attained that position.  
  
If this return is not the first return required to be submitted by you after attaining that position, all Parts of the return should be completed with appropriate information for the relevant return period since the last return, that is, the period from the return date of the last return to 30 June in this year or the period from the end of the last return period to 30 June in this year (whichever is appropriate).
- 3 The particulars required to complete this form are to be written in block letters or typed.
- 4 If any space is insufficient in this form for all the particulars required to complete it, an appendix is to be attached for that purpose which is properly identified and signed by you.
- 5 If there are no pecuniary interests or other matters of the kind required to be disclosed under a particular main heading in this form, the word “NIL” is to be placed in an appropriate space under that heading.
- 6 “\*” means delete whichever is inapplicable.

### Important information

This information is being collected for the purpose of compliance with section 449 of the *Local Government Act 1993*. You must not lodge a return that you know or ought reasonably to know is false or misleading in a material particular. Complaints made about contraventions of these requirements may be referred to the Local Government Pecuniary Interest Tribunal.

The information collected on this form will be kept by the general manager at the council chambers in a register of returns. Everyone is entitled to inspect the register of returns free of charge. You may correct or update the information contained in the register of returns by submitting a fresh return at any time.

### Disclosure of pecuniary interests and other matters

by [full name of councillor or designated person]

\*as at [return date]

\*in respect of the period from [date] to [date]

[councillor's or designated person's signature]

[date]

A. Real Property

Address of each parcel of real property in which I had an interest *at the return date/*at any time during the return period	Nature of interest

B. Sources of income

1 \*Sources of income I reasonably expect to receive from an occupation in the period commencing on the first day after the return date and ending on the following 30 June:

\*Sources of income I received from an occupation at any time during the return period:

Description of occupation	Name and address of employer or description of office held (if applicable)	Name under which partnership conducted (if applicable)

2 \*Sources of income I reasonably expect to receive from a trust in the period commencing on the first day after the return date and ending on the following 30 June:

\*Sources of income I received from a trust during the return period:

Name and address of settlor	Name and address of trustee

3 \*Sources of other income I reasonably expect to receive in the period commencing on the first day after the return date and ending on the following 30 June:

\*Sources of other income I received at any time during the return period:

*[Include description sufficient to identify the person from whom, or the circumstances in which, that income was received]*

C. Gifts

Description of each gift I received at any time during the return period	Name and address of donor

D. Contributions to travel

Name and address of each person who made any financial or other contribution to any travel undertaken by me at any time during the return period	Dates on which travel was undertaken	Name of States, Territories of the Commonwealth and overseas countries in which travel was undertaken

E. Interests and positions in corporations

Name and address of each corporation in which I had an interest or held a position *at the return date/*at any time during the return period	Nature of interest (if any)	Description of position (if any)	Description of principal objects (if any) of corporation (except in case of listed company)

F. Positions in trade unions and professional or business associations	
Name of each trade union and each professional or business association in which I held any position (whether remunerated or not) *at the return date/*at any time during the return period	Description of position
G. Debts	
Name and address of each person to whom I was liable to pay any debt *at the return date/*at any time during the return period	
H. Dispositions of property	
1 Particulars of each disposition of real property by me at any time during the return period as a result of which I retained, either wholly or in part, the use and benefit of the property or the right to re-acquire the property at a later time	
2 Particulars of each disposition of property to a person by any other person under arrangements made by me, being dispositions made at any time during the return period, as a result of which I obtained, either wholly or in part, the use and benefit of the property	
I. Discretionary disclosures	

## Schedule 4 Counting of votes under optional preferential system

(Clause 351)

### 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 One candidate to be elected**

If only one candidate is to be elected, 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.

### **4 Two candidates to be elected**

If 2 candidates are to be elected, the votes are to be counted and the result of the election ascertained in accordance with the following procedures:

- (a) one of the candidates is elected in accordance with clause 3 of this Schedule,
- (b) all the unrejected ballot-papers are rearranged under the names of the respective

candidates in accordance with the first preferences marked on the ballot-papers, except that each ballot-paper on which a first preference for the elected candidate is indicated is placed in the parcel of the candidate next in the order of the voter's preference,

- (c) the number of ballot-papers in the parcel of each candidate is counted and the total number of votes so counted to each candidate is ascertained,
- (d) if a candidate then has an absolute majority of votes he or she is elected. If not, the count proceeds according to clause 3 (d), (e) and (f) of this Schedule, until one candidate has received an absolute majority of votes,
- (e) clause 3 (d) and (e) of this Schedule is to be read for the purposes of this clause as if a reference in those paragraphs to first preference votes were a reference to all the votes counted to a candidate under this clause,
- (f) the candidate who has received an absolute majority of votes is elected.

## **5 Exhausted ballot-papers**

In the process of counting under clause 3 or 4 of this Schedule, exhausted ballot-papers are set aside as finally dealt with and are not taken into account in the election of a candidate under the appropriate clause.

## **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 candidate whose name is on a slip drawn in accordance with subclause (2) is excluded.
- (2) For the purposes of subclause (1) (b) the returning officer writes the names of the candidates who have an equal number of votes on similar slips of paper. The returning officer then folds the slips so as to prevent the names being seen, mixes them, and draws one slip at random.

## **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.

## Schedule 5 Counting of votes under proportional system

(Clause 351)

### 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.

**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:

- (a) except as provided in paragraph (b)—the number of votes which a candidate has obtained at that time in excess of the quota, or
- (b) if the number of exhausted ballot-papers counted to a candidate at that time is greater than the quota—the number of votes which the candidate has obtained at that time in excess of the number of those exhausted ballot-papers.

### 3 Parcels of first preferences

The ballot-papers are divided into parcels according to the names of the candidates for whom the first preferences on the ballot-papers are recorded.

### 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 candidate exceeds the quota, the surplus is 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 clause 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 divided by the total number of first preferences recorded for such elected candidate (excluding any exhausted ballot-papers). The transfer value is equal to the resulting fraction or the first 4 digits of the resulting decimal 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 for each continuing candidate is added to the number of votes obtained by the candidate on the counting of first preferences,
  - (e) however, if as a result of the multiplication referred to in paragraph (c), any fraction results, so many of those fractions (taken in the order of their magnitude and beginning with the largest) as are necessary to ensure that the number of votes transferred equals the number of the elected candidate's surplus votes are treated as equal to 1, and the remaining fractions are ignored,
  - (f) if, as a result of the multiplication referred to in paragraph (c), 2 or more fractions are equal and one of them is to be treated as equal to 1, the fraction arising from the largest number of second or other preferences referred to in paragraph (a) is treated as the largest, and if the numbers of those preferences are equal, the fraction credited to the candidate with the highest number of votes at the last count or transfer at which the candidates with the equal number of preferences had an unequal number of votes is treated as the largest, and if those candidates have had an equal number of votes at all preceding counts and transfers, the returning officer decides by lot which fraction is taken to be the largest,

- (g) from the ballot-papers on which a second or other preference is recorded for any continuing candidate, a number of ballot-papers equal to the number of votes directed by paragraph (d) to be credited to the candidate are selected at random, and these are to be placed in a separate parcel and transferred to the candidate,
- (h) all ballot-papers of the elected candidate not transferred under paragraph (g) (including any exhausted ballot-papers) are set aside as finally dealt with, being the ballot-papers by which the candidate is elected,
- (i) a transfer of votes under this clause is not made unless the surplus of the elected candidate, together with any other surpluses not transferred, exceeds the difference in numbers between the votes of the 2 continuing candidates lowest on the poll.

(2) However, this clause is subject to clause 11 of this Schedule, and if at any time there is one remaining vacancy which can be filled under that clause, no further transfer under this clause 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 clause 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 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 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 ballot-papers transferred to the elected candidate in the last transfer are re-examined, and the number of next consecutive preferences recorded for each continuing candidate on the papers and the number of exhausted ballot-papers are counted,
  - (b) the surplus is divided by the total number of ballot-papers transferred to the elected candidate in the last transfer (excluding any exhausted ballot-papers). The transfer value is equal to the resulting fraction or the first 4 digits of the resulting decimal fraction or (if the fraction exceeds 1) to 1,
  - (c) the surplus is transferred and the papers dealt with in a manner similar to that

prescribed by clause 6 of this Schedule for the transfer of a surplus arising at the first count,

(d) a transfer of votes under this subclause is not made unless the surplus of the elected candidate, together with any other surpluses not transferred, exceeds the difference in numbers between the votes of the 2 continuing candidates lowest on the poll.

(5) However, this clause is subject to clause 11 of this Schedule, and if at any time there is one remaining vacancy which can be filled under that clause, no further transfer under this clause can be made.

## **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) All the unexhausted votes obtained by that candidate are transferred in one transfer to the continuing candidates who, on the ballot-papers on which such votes are recorded, are next in the order of the voters' respective preferences.
- (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 clause is subject to clause 11 of this Schedule, and if at any time there is one remaining vacancy which can be filled under that clause, no further exclusion under this clause can be made.

#### **10 Effect of reaching quota while transfers are proceeding**

- (1) If by a transfer under clause 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 clause 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 clause 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 clause 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 clause 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 lot**

- (1) For the purposes of excluding a candidate by lot under clause 9 or 11 of this Schedule, 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 excluded.
- (2) For the purpose of deciding by lot which candidate's surplus is first to be transferred under clause 8 of this Schedule, the names of the candidates who have equal surpluses 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, one of the slips is drawn at random by the returning officer and the candidate whose name is on the drawn slip is the one whose surplus is the first to be transferred.
- (3) For the purposes of determining the largest fraction under clause 6 of this Schedule, the names of the candidates who have been credited with the equal fractions 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, one of the slips is drawn at random by the returning officer and the candidate whose name is on the drawn slip is taken to have been credited with the largest fraction.

## **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 returns of voting and transfers

- (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 transfer of surpluses, the exclusion of candidates and the transfer of their votes, the votes which are found to be informal, and those which at some stage become exhausted votes.
- (2) At the same time as the declaration of the election, the returning officer is to exhibit in some conspicuous position at the office of the relevant council a record of the voting, counting and transfers.
- (3) The council must, upon application made to it by any person, deliver or send to the person a copy of the record of voting, counting and transfers.

## Schedule 6 Application of [Election Funding Act 1981](#)

(Clause 393)

- 1 The [Election Funding Act 1981](#), as applied by the [Local Government Act 1993](#), is to be read as if section 52 (2) were omitted.
- 2 The [Election Funding Act 1981](#), as applied by the [Local Government Act 1993](#), is to be read as if the references in section 51 (4) (a) to sections 32, 33, 35, 36 and 38 were instead references to sections 32, 33, 34, 35, 36, 37 and 38.
- 3 The [Election Funding Act 1981](#), as applied by the [Local Government Act 1993](#), is to be read as if section 93 (3) (b) were omitted and the following paragraph were inserted instead:
  - (b) in any other case where the Authority considers that compliance would not be appropriate.
- 4 Part 3 and clauses 30–34 of the [Election Funding Regulation 2004](#) apply in relation to elections under the [Local Government Act 1993](#) as if a reference in any of those provisions to a party were a reference to a party registered under that Act.

## Schedule 7 Election of mayor by councillors

(Clause 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 clause:

**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 clause 345 (1) (b) and (c) and (6) of this Regulation as if it were a ballot-paper referred to in that clause.
- (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 subclause (2) is to be repeated until only 2 candidates remain.
- (4) A further vote is to be taken of the 2 remaining candidates.
- (5) Clause 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 subclause (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 clause 345 (1) (b) and (c) and (5) of this Regulation as if it were a ballot-paper referred to in that clause.
- (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 clause, **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 Director-General and to the Secretary of the Local Government and Shires Associations of New South Wales.

## **Schedule 8 Election of chairpersons of county councils**

(Clause 395)

### **Part 1 Preliminary**

#### **1 When election to be held**

- (1) An election for chairperson of a county council is to be held:
- (a) at the first meeting of the county council after an ordinary election of members of the county council, and

(b) at the first meeting of the county council after each anniversary of that ordinary election until the next ordinary election of members of the county council is held.

(2) In subclause (1) (a), **ordinary election of members of the county council** does not include an election held in accordance with clause 1 (2) of Schedule 9 to this Regulation:

(a) after the first election of councillors for a newly amalgamated area that is:

(i) held in accordance with a proclamation made for the purposes of Division 2A of Part 1 of Chapter 9 of the Act, and

(ii) taken by that proclamation to be an ordinary election of councillors, or

(b) after an ordinary election of councillors for an area that has been postponed in accordance with the provisions of Part 6A of Chapter 10 of the Act.

## **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 Director-General 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 clause:
  - 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 clause 345 (1) (b) and (c) and (5) of this Regulation as if it were a ballot-paper referred to in that clause.
- (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 subclause (2) is to be repeated until only 2 candidates remain.
- (4) A further vote is to be taken of the 2 remaining candidates.
- (5) Clause 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 subclause (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 clause 345 (1) (b) and (c) and (5) of this Regulation as if it were a ballot-paper referred to in that clause.
- (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 clause, ***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 Director-General and to the Secretary of the Local Government and Shires Associations of New South Wales.

### **16 By-elections**

- (1) Subject to subclause (2), a by-election to fill a vacancy in the office of chairperson of a county council is to be held at the next meeting of the county council 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 county council in accordance with clause 1 (a) of this Schedule.

## **Schedule 9 Election of members of county councils**

(Clause 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 Director-General 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 clause 345 of this Regulation as if it were a ballot-paper referred to in that clause.
- (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 Director-General.

# **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 clause 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 clause 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 clause 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 clause 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 clause 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 clause 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 subclause (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 subclause (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 spoilt, 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 clause.

## **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 subclause (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 90 of the *Parliamentary Electorates and Elections Act 1912*.

#### **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 clause 345 of this Regulation as if it were a ballot-paper referred to in that clause.
- (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 clause 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 Director-General 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 clause 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 10 Constitutional referendums and council polls**

(Clause 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) clauses 301-305, 345, 351 (1) (b) and (e), 352 and 393-396,
  - (c) Schedules 4-9 and Forms 1-12 in Schedule 11.
- 2** Clause 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,
  - (b) (Repealed)

(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 Commission,

(d) a reference in clause 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) clause 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.

(f) clause 354 (2) and (3) is to be read:

(2) as if the words “an alteration in the candidates who are elected”, wherever occurring, were omitted and the words “an alteration in the decision of the constitutional referendum or council poll” inserted instead, and

(3) as if the references to the candidate were references to the scrutineer,

(g) clause 356 (2) is taken to be omitted and the following subclause 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.

(h) clause 356 (7) (a) and (b) are taken to be omitted and the following paragraph inserted instead:

(a) the question on the poll-paper and the number of “Yes” votes and the number of “No” votes, and

(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, clause 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 Commission of the resolution within 21 days after the council makes the resolution,

(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 Commission of the question to be asked at the referendum or poll no later than 12 noon on the nomination day for the election,

- (b) the Electoral Commission is to notify in a newspaper circulating 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, 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) 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 Electoral Commission publishes a notice under clause 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 word “Yes” nor the word “No” is written in or near the space provided opposite the question, 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 word “Yes” nor the word “No” is written in or near the space provided opposite the question, 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 clause 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)**

(Clause 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 State Electoral Office.

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

**Form 2 Nomination paper: proposal by electors**

(Clause 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 be shown on the ballot-papers as [surname in BLOCK letters, given name in BLOCK letters] being my full surname and one of my given names or a generally recognised abbreviation or derivative of that

given name,

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].

[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 Examples of recognised abbreviations or derivatives of given names are Bill for William and Rose for Rosemary. Nicknames, eg Blue or Bunny, are not abbreviations or derivatives. Names are not to be accompanied by any title or academic or other qualification.
- 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).

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  female

(b) I am 18–24 years old   
25–29 years old   
30–39 years old   
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                        | <input type="checkbox"/>                        |
| 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) _____ |

[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**

(Clause 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 be shown on the ballot-papers as [*surname in BLOCK letters, given name in BLOCK letters*]  
being my full surname and one of my given names or a generally recognised abbreviation or derivative of that given name.

[*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** Examples of recognised abbreviations or derivatives of given names are Bill for William and Rose for Rosemary. Nicknames, eg Blue or Bunny, are not abbreviations or derivatives. Names are not to be accompanied by any title or academic or other qualification.

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  female

(b) I am 18–24 years old   
25–29 years old   
30–39 years old   
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                        | <input type="checkbox"/>                        |
| 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) _____ |

[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**

(Clause 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 only one candidate is 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 2 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

(Clause 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)  
\*

### GROUP B

BROWN,  
Denise  
\*\*

### GROUP C

DAVIS,  
Ronald  
(Storekeeper,  
Tenterfield)  
\*

MAHON  
Sharon  
\*\*\*

ARRAIZA,  
Ramon  
\*

KABOS,  
Colin  
\*\*

DAVIS,  
Ronald  
(Grazier,  
Tenterfield)  
\*

WHITMORE,  
Terence  
\*\*\*

VALADON,  
Sue  
(Tenterfield)  
\*

HO,  
Liam  
\*

\* 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**

(Clause 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].


Directions for Voting

**You may vote in one of two ways**

either 

Place the number "1" in the square above the group of candidates for whom you wish to vote. If you wish to vote for additional candidates, place consecutive numbers beginning with the number "2" in the squares above the additional groups of candidates in the order of your preferences for them.

GROUP A *	GROUP B	GROUP D *
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

or 

Place the numbers (here insert the sequence of numbers which corresponds to half the number of candidates to be elected) in the squares opposite the names of (here insert half the number of candidates to be elected) candidates in order of your preference for them. If you wish to vote for additional candidates place consecutive numbers beginning with the number (here insert the next number after half the number of candidates to be elected) in the squares opposite the names of those additional candidates in order of your preferences for them.

GROUP A <input type="checkbox"/> PARKER Alan ** <input type="checkbox"/> MILLER John ** <input type="checkbox"/> MORGAN Albert ** <input type="checkbox"/> LUMSDAINE Elaine **	GROUP B <input type="checkbox"/> WILLIAMS Gregory *** <input type="checkbox"/> ROGERS Ralph *** <input type="checkbox"/> COWAN Pamela ***	GROUP C <input type="checkbox"/> WRIGHT Elizabeth ** <input type="checkbox"/> LEVY Mark ** <input type="checkbox"/> MCKENZIE Donald ** <input type="checkbox"/> PAGANO Victor ** <input type="checkbox"/> WOOD Henry **	GROUP D <input type="checkbox"/> SMITH Byron ** <input type="checkbox"/> HANSON Richard ** <input type="checkbox"/> LANHAM Margaret ** <input type="checkbox"/> PEREZ Juan **	<input type="checkbox"/> KNIGHT Colin **** <input type="checkbox"/> ASSAF Joseph **** <input type="checkbox"/> WHITE Veronica **** <input type="checkbox"/> CRAWFORD James **** <input type="checkbox"/> MARTIN Michael ****
--	---	---	---	---

\* Here insert name of registered party or composite name if to be printed  
 \*\* 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

[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 7 Application for postal vote**

[insert name of area]

I declare that:

- 1 My full name is [name in BLOCK letters]
- 2 I am entitled to vote at the forthcoming election to be held in the [name of ward] ward of the abovementioned local government area and the address of the land to which my entitlement relates (as resident, non-resident owner, occupier or ratepaying lessee) is [address]
- 3 I have not already voted in connection with this election.
- 4 I am making this application for the following reason or reasons [tick the squares that apply]:
  - I will not, throughout the hours of polling on election day, be within the ward or area for which this election is being held,
  - I 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 I am entitled to vote,
  - I will, throughout the hours of polling on election day, be travelling under conditions that will prevent me from attending at any such polling place to vote,
  - I am seriously ill or disabled and will be prevented by that illness or disability from attending at any such polling place to vote,
  - I will be prevented by approaching maternity from attending at any such polling place to vote,
  - I am, by reason of my membership of a religious order or my religious beliefs, prevented from attending at any such polling place on election day or prevented from voting throughout the hours of polling on election day or throughout the greater part of those hours,
  - I am, by reason of my being kept in a correctional centre, prevented from attending at any such polling place to vote,
  - I will be, at a place other than a hospital, caring for a person who requires my care for medical reasons and because of that I will be prevented from attending at any such polling place to vote,
  - I will, by reason of my 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,
  - I am a silent elector.

I hereby apply for a postal ballot-paper and postal voting envelope so that I may vote at the abovementioned election. Please send them to the address below.

[signature of elector]

[date]

[address to which ballot-paper and envelope are to be sent: for a resident voter this can be any address, but for a non-resident voter it must be the voter's residential address]

STATEMENT OF WITNESS

I am of or above the age of 18 years and am not a candidate or the agent of a candidate at the abovementioned

election, and

I am satisfied as to the identity of the applicant, and

I have seen the applicant sign the application, and

I know, or have satisfied myself by inquiry, that the statements contained in the application are true.

[signature of witness]

[address of witness]

[date]

Application No (official use only)

### **Form 8 Postal vote declaration**

(Clause 317)

Application No (official use only)

I [insert full name in BLOCK letters] declare that:

- 1 I have not already voted in connection with the forthcoming election being held on [date] in the [name of ward] ward of [local government area].
- 2 I am still entitled to vote at the election and the address of the land to which my voting entitlement relates (as resident, non-resident owner, occupier or ratepaying lessee) is:  
[full address].
- 3 To the best of my knowledge and belief I am enrolled on the New South Wales or Commonwealth electoral roll.
- 4 The postal vote to which this declaration relates was completed before the close of the poll in the election.

[signature]

[date]

#### WITNESSING OF DECLARATION

I am at least 18 years old and am not a candidate or an agent of a candidate at the abovementioned election, and

I am satisfied as to the identity of the elector, and

I have seen the elector sign the declaration, and

I know, or have satisfied myself by reasonable inquiry, that the statements contained in the declaration are true.

The declaration was made before the close of the poll in the election.

[signature of witness]

[address of witness]

[date]

### **Form 9 Postal ballot-paper lost or not received**

(Clause 318 (7))

[insert name of ward if applicable] [insert name of area]

I, [full name as it appears on the roll],

of [full address as it appears on the roll],

- declare that I have lost or have not received a postal ballot-paper in connection with the election being held in the abovementioned ward or area, even though a mark has been placed against my name on the roll to indicate that a postal ballot-paper has been issued to me.
- declare that I have lost or have not received a declaration envelope in connection with the election being held in the abovementioned ward or area, even though a record has been made that such an envelope has been

issued to me.

*Tick the square that applies. Tick both squares if both apply.*

I claim to vote under clause 318 of the [Local Government \(General\) Regulation 2005](#).

[signature of elector]

Declared before me, this [date] at the [name of polling place] polling place.

[returning officer/election official]

**Form 10 Declaration for pre-poll voting and declared institution declaration (including declaration where name is not on the roll)**

(Clauses 323 and 330)

[insert name of ward if applicable] [insert name of area]

I declare that:

1 [tick the appropriate square and complete the appropriate declaration]

- I am the person enrolled as [name on roll] of [address on roll, if address appears on roll] on the roll of electors for that ward or area.

OR

- My name is not on the appropriate roll of electors. My name is [full name in BLOCK letters] and the address of the land to which my voting entitlement relates (as resident, non-resident owner, occupier or ratepaying lessee) is [address]

*If you have changed your name since you enrolled for the above address please print your previous name here [previous name]*

To the best of my knowledge and belief I am enrolled on the New South Wales or Commonwealth electoral roll.

I claim to vote under section 305 of the [Local Government Act 1993](#) in that area or ward.

2 My date of birth is [date].

3 I am entitled to vote at the forthcoming election to be held in that ward or area.

4 I have not already voted in connection with the election and if I vote here I will not vote again anywhere else in that area at the election.

5 If the vote is being cast otherwise than at a declared institution, I am qualified to vote before election day on the following ground [insert ground or reference to ground].

[signature of elector]

This declaration was declared before me, and I have seen the elector sign the declaration [date]

[signature of election official]

**Form 11 Declaration where name is not on the roll (election day)**

(Clause 343)

[insert name of ward if applicable] [insert name of area]

I declare that:

1 My name is not on the appropriate roll of electors. My name is [full name in BLOCK letters] and the address of the land to which my voting entitlement relates (as resident, non-resident owner, occupier or ratepaying lessee) is [address]

*If you have changed your name since you enrolled for the above address please print your previous name here [previous name]*

To the best of my knowledge and belief I am enrolled on the New South Wales or Commonwealth electoral roll.

2 My date of birth is [date].

3 I claim to vote under section 305 of the *Local Government Act 1993* in the [name of ward] ward of that area.

4 I am entitled to vote at this election [or the forthcoming election to be held in the abovementioned ward or area].

5 I have not already voted in connection with the election and if I vote here I will not vote again anywhere else in that area at the election.

[signature of elector]

This declaration was declared before me, and I have seen the elector sign the declaration [date]

[signature of election official]

### **Form 12 Declaration by an elector whose place of living is not on the roll**

(Clause 339 (6))

[insert name of ward if applicable] [insert name of area]

Surname of elector [in BLOCK letters]

Given names [in BLOCK letters]

Address for which I claim to be enrolled [address]

If you have changed your name since you enrolled for the above address please print your previous name here [previous name]

I am entitled to vote. I have not already voted at this election.

I declare that the information shown above is true.

Signature of elector

Polling place

Ward

Area

Date

### **Form 13 Voting if name already marked on roll**

(Clause 344 (1))

*(To be made by person claiming to vote when the person's name has already been marked off at the same polling-place)*

To the returning/senior deputy returning officer [ward] [local government area]

I, [name in full as it appears on the roll],

of [address in full]

declare that:

1 My name appears on the roll used at the [name of polling place] polling place opposite the number [number] on that roll.

2 I have not voted in connection with the election for the abovementioned ward or area being held today, despite the fact that the roll has been marked to indicate that a ballot-paper has purportedly been issued to me at the polling-place.

I claim to vote under clause 344 of the *Local Government (General) Regulation 2005*.

[signature of voter]

Declared before me, this [date] at the [name of polling-place] polling-place.



[election official]

**Form 14 Account of ballot-papers**

(Clause 348)

[insert name of area]

Ballot-papers received from returning officer for use at the polling place

Ballot-papers written out by polling place manager

Total:

Ballot-papers unused

Ballot-papers spoilt

Ballot-papers used

Ballot-papers issued to, but not returned by, electors

Tendered votes

Section 305 votes

Total:

Postal ballot-papers delivered up and cancelled

[polling place manager]

**Form 15 Penalty notice—Failure to vote**

(Clause 357)

---

<b>Area</b>	<b>Ward</b>	<b>No on Roll</b>
-------------	-------------	-------------------

---

[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, clause 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, write the word "Yes" in the space provided opposite the question.  
If you decide to answer "No" to the question, write the word "No" in the space provided opposite the question.

Question:           [*here set out question*]

**Schedule 12 Penalty notice offences**

(Clauses 398 and 399)

<b>Column 1</b>	<b>Column 2</b>
<b>Offence under <i>Local Government Act 1993</i></b>	<b>Penalty</b>
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

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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 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
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

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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
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

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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,	\$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
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
Section 651C (1) (b)—demand payment for or in relation to the release of a vehicle	\$300