

Lord Howe Island Regulation 2004

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New South Wales

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Notes—

- **Does not include amendments by**
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New South Wales

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Lord Howe Island Regulation 2004



New South Wales

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Lord Howe Island Regulation 2004*.

2 Commencement

This Regulation commences on 1 September 2004.

Note—

This Regulation replaces the *Lord Howe Island (Elections) Regulation 1999* and the *Lord Howe Island (General) Regulation 1994*, which are repealed on 1 September 2004 under section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions and notes

(1) In this Regulation:

exercise a function includes perform a duty.

function includes a power, authority or duty.

relevant fee, in relation to:

- (a) a matter under Part 3, means the fee specified in Schedule 2 for that matter, or
- (b) any other matter, means the fee for the time being fixed by the Board under section 15 of the Act for that matter.

the Act means the *Lord Howe Island Act 1953*.

(2) In this Regulation, a reference to a Form is a reference to a Form set out in Schedule 1.

(3) Notes in the text of this Regulation do not form part of this Regulation.

4 Approvals

(1) The Board may determine an application for an approval referred to in this Regulation.

- (2) The provisions of the *Local Government Act 1993* applicable to approvals and the making and determination of applications for approvals apply to an approval, and to the making and determination of an application for an approval, referred to in this Regulation. Those provisions apply as if references in that Act to:
- (a) a council were references to the Board, and
 - (b) an approved fee were references to a relevant fee within the meaning of this Regulation, and
 - (c) a penalty were references to a penalty not exceeding 50 penalty units.

5 Applications

An application under Part 4 of the Act (Land tenure) or under Part 3 of this Regulation (Leases) or for the granting by the Board of licences referred to in Part 4 of this Regulation (Licensing of tourist accommodation and other commercial undertakings) must:

- (a) if no form is otherwise prescribed by this Regulation, be made in a form approved by the Board for the purpose, and
- (b) be lodged at the Island office of the Board, and
- (c) be signed by the applicant, and
- (d) be accompanied by the relevant fee.

Part 2 Elections

Division 1 Interpretation

6 Definitions

In this Part:

close of nominations for an election means the final time and date fixed by the returning officer for the close of nominations in the election.

deputy returning officer means the person appointed as deputy returning officer under clause 10.

election means an election under Division 3 of Part 2 of the Act.

election notice for an election means the notice published in respect of the election under clause 8.

elector for an election means a person whose name appears on the roll for the election.

polling day for an election means the final time and date fixed by the returning officer for the taking of the poll in the election.

returning officer means the person appointed as returning officer under clause 10.

roll for an election means a roll of electors prepared and certified in accordance with Division 4 in respect of the election.

Division 2 Calling of election

7 Election to fill casual vacancy

The Minister must notify the Electoral Commissioner if an election is required to be conducted under section 9A (c) of the Act when a member referred to in section 4 (3) (a) of the Act vacates office.

8 Calling of election

- (1) When required to conduct an election under section 9A of the Act, the Electoral Commissioner:
 - (a) must cause a notice of the proposed election to be published in the Gazette, and
 - (b) must cause a copy of the notice to be displayed on at least 2 public notice boards on the Island.
- (2) The notice:
 - (a) must state that an election is to be held, and
 - (b) must specify the address of the office of the returning officer on the Island, and
 - (c) must invite nominations of candidates for the election, and
 - (d) must fix the close of nominations, and
 - (e) must fix the day for taking the poll.
- (3) The close of nominations must be not earlier than 7 days and not later than 14 days after the publication in the Gazette of the election notice.
- (4) The polling day:
 - (a) must be not earlier than 30 days after the publication in the Gazette of the election notice, and
 - (b) must not be a Saturday, a Sunday or a day that is a public holiday on the Island.

9 Extension of time

- (1) If of the opinion that an election would fail, the Electoral Commissioner may (by a notice published and displayed in the same manner as the election notice) fix a later time and day for the close of nominations or for polling day than that fixed by a

previous notice for the election.

- (2) The notice must not fix a day more than 14 days after the day fixed by the previous notice for the election.
- (3) The power conferred on the Electoral Commissioner by this clause may be exercised more than once in respect of an election.

Division 3 Appointment of returning officer

10 Appointment of returning officer and other electoral officials

The Electoral Commissioner must appoint:

- (a) a returning officer for the purposes of conducting elections, and
- (b) a deputy returning officer, and
- (c) such other electoral officials as may be necessary to assist the returning officer.

11 Delegation by returning officer

The returning officer may delegate to the deputy returning officer any or all of the returning officer's functions under this Regulation, other than this power of delegation.

12 Scrutineers

Each candidate for election is entitled to appoint, by writing signed by the candidate:

- (a) one scrutineer to act on the candidate's behalf at the taking of the votes, and
- (b) one scrutineer (who may, but need not be, the scrutineer referred to in paragraph (a)) to act on the candidate's behalf at the scrutiny.

Division 4 The roll

13 Preparation, certification and transmission of roll

As soon as practicable after the publication in the Gazette of an election notice, the Electoral Commissioner must prepare, certify and transmit to the returning officer a roll of the persons entitled to be enrolled as electors for the election, as at the date of publication of the election notice.

14 Particulars in roll

The roll for an election must be in the same form and contain the same particulars of electors as the State electoral roll for the electorate in which the Island is situated.

15 Persons entitled to vote

The persons entitled to vote at an election are the persons included in the roll for the

election.

Division 5 Nominations

16 Qualifications of candidates

A person is qualified to be nominated as a candidate at an election if the person is an Islander and is entitled to be enrolled as an elector for the election.

17 Manner of nominating candidates

- (1) A person may be nominated as a candidate at an election by the delivery to the returning officer, at any time after the publication of the election notice and before the close of nominations, of a nomination paper in Form 1.
- (2) A candidate at an election must be nominated by at least 2 persons (other than the candidate) each of whom is entitled to be enrolled as an elector for the election.
- (3) A person may not nominate more candidates than the number of persons to be elected.
- (4) On receiving a nomination paper, the returning officer must, if required to do so, give a receipt for it.
- (5) A nomination paper is not available for public inspection.

18 Rejection of nomination

The returning officer must reject the nomination of a person as a candidate at an election:

- (a) if the person is not qualified to be nominated under clause 16, or
- (b) if the person has not been duly nominated under clause 17.

19 Withdrawal of nomination

A candidate may withdraw the candidate's nomination by notice in writing delivered to the returning officer at any time before the close of nominations.

20 Uncontested election

If, by the close of nominations, the number of candidates nominated for election does not exceed the number of persons to be elected, the returning officer:

- (a) must publicly declare those candidates elected, and
- (b) must notify the Electoral Commissioner that those candidates have been elected.

21 Contested election

- (1) If, by the close of nominations, the number of candidates nominated exceeds the

number of persons to be elected, a poll must be taken on polling day.

(2) If a poll is to be taken, the returning officer must publicly announce the following:

- (a) that a poll will be taken,
- (b) the date of the poll,
- (c) the names of the candidates,
- (d) the address of the polling place,
- (e) the hours that the polling place will be open for voting on polling day.

(3) The returning officer must also notify the matters referred to in subclause (2) in a written notice displayed on at least one public notice board on the Island.

Division 6 Ballot-papers

22 Order of candidates' names on ballot-papers

As soon as practicable after the close of nominations, the returning officer:

- (a) must determine the order in which the candidates' names are to be listed on a ballot-paper by means of a ballot held in accordance with the procedure prescribed for the purposes of section 82A of the *Parliamentary Electorates and Elections Act 1912*, and
- (b) must notify the Electoral Commissioner of the order so determined.

23 Provision of ballot-papers

The ballot-papers are to be provided by the Electoral Commissioner.

24 Printing of ballot-papers

(1) The following provisions must be observed in printing the ballot-papers:

- (a) the names of the candidates must be listed in the order determined under clause 22,
- (b) the surname of each candidate must be in more conspicuous type than that used for the given name or names of the candidate,
- (c) if, in the opinion of the Electoral Commissioner, the names of 2 or more candidates are so similar as to cause confusion, the Electoral Commissioner may include such other matter as will, in the Electoral Commissioner's opinion, distinguish between those candidates,
- (d) a square must be printed opposite the name of each candidate,
- (e) the directions as to the manner in which the vote is to be recorded must comprise

such of the directions referred to in subclause (2) as are applicable to the election.

- (2) An elector must record the elector's vote on the ballot-paper in accordance with the following directions:
- (a) if there is more than 1 person to be elected, the elector must record the elector's vote for the number of persons to be elected by placing a number of ticks or crosses, each tick or cross being placed in a square opposite the name of a candidate for whom the elector desires to record a vote, where the number of ticks or crosses placed is equal to the number of persons to be elected,
 - (b) if there is 1 person to be elected:
 - (i) the elector must record the elector's vote for at least 1 candidate by placing the number "1" in the square opposite the name of the candidate for whom the elector desires to give a first preference vote, and
 - (ii) the elector 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 elector's preferences for them.

Division 7 Postal voting

25 Application to vote by post

- (1) The following electors may make an application to the returning officer to vote by post:
- (a) an elector who will not, throughout the hours of polling on polling day, be on the Island,
 - (b) an elector who, because of illness or infirmity or (in the case of a woman) approaching maternity, will be precluded from attending at the polling place to vote,
 - (c) an elector who, because of the elector's membership of a religious order or the elector's religious beliefs:
 - (i) is precluded from attending at the polling place to vote, or
 - (ii) is precluded from voting throughout the hours of polling on polling day or throughout the greater part of those hours,
 - (d) an elector who is precluded from attending at the polling place to vote because of the elector's being:
 - (i) an inmate of a correctional centre (within the meaning of the *Crimes (Administration of Sentences) Act 1999*), or

(ii) a detainee of a detention centre (within the meaning of the *Children (Detention Centres) Act 1987*).

(2) An application to vote by post:

(a) must be in writing, and

(b) must specify the ground on which it is made, and

(c) must be signed by the elector, and

(d) may be made at any time after the publication in the Gazette of the election notice in respect of the election but not later than 7 days before polling day.

(3) The returning officer must number in consecutive order all applications to vote by post.

26 Distribution of postal ballot-papers

(1) The returning officer must deliver or post to each elector who duly applies to vote by post:

(a) a ballot-paper:

(i) that has been initialled on the back by the returning officer, and

(ii) if the particulars of the candidates are not already printed on the ballot-paper—on which the returning officer has entered the names of the candidates in the order determined under clause 22, and

(b) an unsealed envelope addressed to the returning officer and bearing on the back the words “NAME AND ENROLLED ADDRESS OF VOTER” and “SIGNATURE OF VOTER”, together with appropriate spaces for the insertion of the elector’s name, address and signature.

(2) The returning officer must note on a certified copy of the roll the names of the electors to whom a ballot-paper has been delivered or posted.

(3) An elector to whom a ballot-paper has been delivered or posted is not entitled to vote in accordance with Division 8 or 9 unless the elector first delivers the elector’s ballot-paper to the returning officer for cancellation.

27 Duplicate postal ballot-papers

(1) If an elector to whom a ballot-paper has been delivered or posted satisfies the returning officer that the elector has spoiled the ballot-paper by mistake or accident, the elector may, on giving it up, receive a new ballot-paper from the returning officer.

(2) The returning officer must cancel and preserve the spoiled ballot-paper.

28 Recording of postal vote

On receipt of a ballot-paper, an elector who wishes to vote by post must:

- (a) record the elector's vote on the ballot-paper in accordance with the directions shown on it, and
- (b) place the completed ballot-paper (folded so that the vote cannot be seen) in the envelope addressed to the returning officer, and
- (c) seal the envelope, and
- (d) insert the elector's full name, address and signature on the back of the envelope, and
- (e) post or deliver the envelope to the returning officer so as to be received by the returning officer not later than 6 pm on polling day.

29 Preliminary scrutiny of postal ballot-papers

At the scrutiny, the returning officer must:

- (a) produce all applications under this Division and all envelopes purporting to contain ballot-papers received by the returning officer before 6 pm on polling day, and
- (b) compare the signature of the elector on each such envelope with the signature of the same elector on the relevant application and allow the scrutineers to inspect both signatures, and
- (c) if the returning officer is satisfied that the signature on the envelope is that of the elector who signed the relevant application—accept the ballot-paper for further scrutiny, and
- (d) if the returning officer is not satisfied that the signature on the envelope is that of the elector who signed the relevant application—disallow the ballot-paper without opening the envelope, and
- (e) take from the envelopes all ballot-papers accepted for further scrutiny and (without inspecting or unfolding them or allowing any other person to do so) must place them in a locked ballot-box for further scrutiny under Division 10.

Division 8 Pre-poll voting

30 Application to vote before polling day

- (1) An elector may make an application to the returning officer to vote before polling day if:
 - (a) the elector intends to leave the Island after the close of nominations and will not, throughout the hours of polling on polling day, be on the Island, or

(b) the elector, because of illness or infirmity or (in the case of a woman) approaching maternity, will be precluded from attending at the polling place to vote.

(2) An application to vote before polling day:

(a) must be in writing, and

(b) must specify the ground on which it is made, and

(c) must be signed by the elector, and

(d) may be made:

(i) in the case of an application under subclause (1) (a)—at any time after the close of nominations, or

(ii) in the case of an application under subclause (1) (b)—at any time after the publication in the Gazette of the election notice,

but not later than 5 pm on the day before polling day, and

(e) in the case of an application under subclause (1) (a)—must be delivered by the elector in person to the office of the returning officer.

(3) The returning officer must number in consecutive order all applications to vote before polling day.

31 If vote taken

The vote of an elector who makes an application to vote before polling day must be taken before polling day at the office of the returning officer or during a visit made to the elector by the returning officer.

32 Procedure for taking votes

(1) The returning officer must deliver to each elector voting under this Division:

(a) a ballot-paper:

(i) that has been initialled on the back by the returning officer, and

(ii) if the particulars of the candidates are not already printed on the ballot-paper—on which the returning officer has entered the names of the candidates in the order determined under clause 22, and

(b) an unsealed envelope addressed to the returning officer and bearing on the back the words “NAME AND ENROLLED ADDRESS OF VOTER” and “SIGNATURE OF VOTER”, together with appropriate spaces for the insertion of the elector’s name, address and signature.

- (2) On receiving a ballot-paper, the elector must:
 - (a) record the elector's vote on the ballot-paper in accordance with the directions shown on it, and
 - (b) place the completed ballot-paper, folded so that the vote cannot be seen, in the envelope addressed to the returning officer and delivered with the ballot-paper, and
 - (c) seal the envelope, and
 - (d) insert the elector's full name, address and signature on the back of the envelope, and
 - (e) place the envelope in a locked ballot-box provided by the returning officer.
- (3) The provisions of clauses 38–40, 42 and 43 apply to the taking of the votes under this Division in the same way as they apply to the taking of the votes under Division 9.

33 Preliminary scrutiny of pre-poll ballot-papers

At the scrutiny, the returning officer must:

- (a) produce all applications under this Division and all envelopes purporting to contain ballot-papers that were placed in a ballot-box, and
- (b) compare the signature of the elector on each such envelope with the signature of the same elector on the relevant application and allow the scrutineers to inspect both signatures, and
- (c) if the returning officer is satisfied that the signature on the envelope is that of the elector who signed the relevant application—accept the ballot-paper for further scrutiny, and
- (d) if the returning officer is not satisfied that the signature on the envelope is that of the elector who signed the relevant application—disallow the ballot-paper without opening the envelope, and
- (e) take from the envelopes all ballot-papers accepted for further scrutiny and (without inspecting or unfolding them or allowing any other person to do so) place them in a locked ballot-box for further scrutiny under Division 10.

Division 9 Voting at polling place

34 Appointment of polling place

The returning officer must appoint a polling place on the Island for the purposes of taking the poll at an election.

35 Arrangements at polling place

- (1) The returning officer must make, or cause to be made, all the necessary arrangements for taking the poll at the polling place.
- (2) Immediately before taking the poll at the polling place, the returning officer must:
 - (a) exhibit the ballot-box, open and empty, for the inspection of any candidate, scrutineer or other person present, and
 - (b) immediately afterwards close it, lock it and place it on the table at which the returning officer is to preside in full view of all persons present at the polling place.
- (3) The ballot-box must be kept unopened on the table on which it is placed until the close of the poll.

36 Hours of polling

The polling place must be open for voting on polling day at all times between 8 am and 6 pm.

37 Electors to give name and address

Each person claiming to vote at the polling place must state:

- (a) the person's surname and given name or names, and
- (b) any other particulars necessary for the purpose of identifying the name on the roll under which the vote is claimed if required to do so by the returning officer.

38 Questions for challenged voters

- (1) The returning officer may, and at the request of any scrutineer must, put to any person claiming to vote all or any of the following questions:
 - (a) Are you the person whose name appears as [*here state name under which the person claims to vote*] on the roll for this election?
 - (b) Are you at least 18 years of age?
 - (c) Have you already voted at this election?
 - (d) Are you disqualified from voting?
 - (e) Are you a resident on the Island?
- (2) If any person refuses to answer fully any question put to the person by the returning officer, or by the person's answer shows that the person is not entitled to vote, the person's claim to vote must be rejected.
- (3) The person's answers to the questions are conclusive and the person's entitlement to

vote is not to be further inquired into during the polling.

39 Errors not to forfeit vote

- (1) An omission of any given name, or entry of a wrong given name, address or occupation, or a mistake in the spelling of any surname, does not warrant the rejection of any claim to vote if, in the opinion of the returning officer, the elector is sufficiently identified.
- (2) A female elector is not disqualified from voting under the name appearing on the roll because her surname has been changed as a result of marriage, but, in that case, a note of the fact must be made by the returning officer.

40 Initialling of ballot-papers

- (1) Before giving a ballot-paper to an elector, the returning officer must initial the ballot-paper on the back.
- (2) The returning officer must keep an exact account of all initialled ballot-papers.
- (3) The returning officer must mark off the roll the name of any elector to whom a ballot-paper is given.

41 Recording of vote

On receipt of a ballot-paper the elector:

- (a) must retire alone to some unoccupied booth at the polling place and there in private record the elector's vote on the ballot-paper in accordance with the directions shown on it, and
- (b) must fold the ballot-paper so as to conceal the names of the candidates and then immediately deposit it in the ballot-box, and
- (c) must then leave the polling place.

42 Spoilt ballot-papers

- (1) If an elector, before his or her ballot is deposited in the ballot-box, satisfies the returning officer that the elector has spoilt the elector's ballot-paper by mistake or accident, the elector may, on giving it up, receive a new ballot-paper from the returning officer.
- (2) The returning officer must cancel and preserve the spoilt ballot-paper.

43 Assistance to certain electors

- (1) If an elector satisfies the returning officer that the elector's sight is so impaired, or that the elector is so physically incapacitated, that the elector is unable to vote

without assistance, the returning officer must permit a person appointed by the elector:

- (a) to accompany the elector to an unoccupied booth, and
- (b) to mark the ballot-paper according to the instructions of the elector, and
- (c) to fold and deposit the ballot-paper in the ballot-box.

(2) If the elector fails to appoint a person, or satisfies the returning officer that the elector is so illiterate that the elector is unable to vote without assistance, the returning officer must, in the presence of:

- (a) any scrutineers who choose to be present, or
- (b) if there are no scrutineers present, in the presence of any person whom the elector may appoint,

mark the ballot-paper according to the instructions of the elector and fold and deposit the ballot-paper in the ballot-box.

(3) An elector's instructions may be given by handing to the person marking the ballot-paper a "how-to-vote" card, or a printed or written statement indicating:

- (a) the candidate for whom the elector desires to vote, or
- (b) the candidates for whom the elector desires to vote and the order of the elector's preferences for them.

44 Voting procedure—disputed votes

(1) A person claiming to vote at the polling place may vote in accordance with this Part even though:

- (a) a mark on the roll indicates that the person has already voted, if the person's answers to the questions put to the person by the returning officer under clause 38 show that the person is entitled to vote, or
- (b) a mark on the roll indicates that a ballot-paper has been delivered or posted to the person under Division 7, if the person states that the person has not applied to vote by post and the person's answers to the questions put to the person by the returning officer show that the person is entitled to vote, or
- (c) the person's name cannot be found on the roll, if the person claims to be entitled to be enrolled as an elector for the election.

(2) After recording a vote in accordance with this clause, the elector must:

- (a) place the completed ballot-paper (folded so that the vote cannot be seen) in an envelope that is addressed to the returning officer and on which the person has

made a written declaration specifying the ground on which the person claims to vote, and

- (b) sign the declaration, and
- (c) seal the envelope, and
- (d) hand the envelope to the returning officer.

(3) The returning officer:

- (a) must examine the declarations on all envelopes purporting to contain ballot-papers of persons voting in accordance with this clause, and
- (b) if, after making such inquiries as the returning officer considers necessary, the returning officer is satisfied that the person who signed the declaration on any such envelope is entitled to vote, must accept the ballot-paper for further scrutiny, and
- (c) if the returning officer is not so satisfied, must disallow the ballot-paper without opening the envelope, and
- (d) must take from the envelopes all ballot-papers accepted for further scrutiny and (without inspecting or unfolding them or allowing any other person to do so) place them in a locked ballot-box for further scrutiny under Division 10.

Division 10 The scrutiny

45 Scrutiny of votes at close of poll

- (1) At the close of the poll, the returning officer must:
 - (a) carry out the procedures specified in clauses 29, 33 and 44, and
 - (b) unlock the ballot-boxes, and
 - (c) remove the ballot-papers from the ballot-boxes, and
 - (d) examine each ballot-paper and reject those that are informal, and
 - (e) proceed to count the votes and ascertain the result of the election in accordance with clause 47 or 48, as the case requires.
- (2) The scrutiny of votes is to be carried out in the presence of the following persons only:
 - (a) the returning officer's assistants,
 - (b) any scrutineers who choose to be present.

46 Informal ballot-papers

- (1) A ballot-paper must be rejected as informal if:
 - (a) it is neither initialled by the returning officer nor bears a mark prescribed as an official mark for the purposes of section 122A (3) of the *Parliamentary Electorates and Elections Act 1912*, or
 - (b) the elector has failed to record the elector's vote in the manner directed on the ballot-paper, or
 - (c) it has on it any mark or writing that, in the opinion of the returning officer, will enable any person to identify the elector.
- (2) A ballot-paper must not be rejected as informal merely because of any mark or writing that is not authorised or required by this Regulation (not being a mark or writing referred to in subclause (1) (c)) if, in the opinion of the returning officer, the elector's intention is clearly indicated on the ballot-paper.
- (3) If there is only 1 person to be elected, a ballot-paper on which the elector has recorded votes for not less than the number of persons to be elected must not be rejected as informal:
 - (a) merely because the same preference (other than the elector's first preference) has been recorded on the ballot-paper for more than 1 candidate, but the ballot-paper must be treated as if those preferences and any subsequent preferences had not been recorded on the ballot-paper, or
 - (b) merely because there is a break in the order of the elector's preferences recorded on the ballot-paper, but the ballot-paper must be treated as if any subsequent preferences had not been recorded on the ballot-paper.
- (4) If there is more than 1 person to be elected, despite anything to the contrary in this Part, a ballot-paper must not be rejected as informal merely because the number of candidates for which the elector has recorded a vote is less than the number of persons to be elected.
- (5) If there is more than 1 person to be elected, despite anything to the contrary in this Part, a ballot-paper must not be rejected as informal merely because the elector has placed a single number in a number of squares if the number of squares with a single number in them is no more than the number of persons to be elected. However, the ballot-paper is to be treated as if any such single number was a tick or a cross.
- (6) Nothing in subclause (5) authorises any person, if there is more than 1 person to be elected, to encourage an elector to place a number in a square on a ballot-paper.

47 Method of counting votes for more than 1 vacancy

- (1) If there is more than 1 person to be elected, the method of counting votes is to be the “first past the post” method, that is, the candidates with the most votes are taken to be elected.
- (2) If the number of candidates to be elected cannot be determined because of an equality of votes, the candidate taken to be elected is the candidate whose name is drawn by lot from a receptacle containing the names of each of the candidates having equal votes.

48 Method of counting votes for 1 vacancy

- (1) If there is 1 person to be elected, the method of counting the votes to ascertain the result of the election is to be as provided by Part 2 of the Seventh Schedule to the [Constitution Act 1902](#).
- (2) Part 2 of the Seventh Schedule to the [Constitution Act 1902](#) applies to such an election as if a reference to the returning officer in that Part were a reference to the returning officer under this Regulation.

49 Declaration of poll

Immediately after the result of a poll has been ascertained, the returning officer must:

- (a) publicly declare the candidates elected, and
- (b) notify the Electoral Commissioner that those candidates have been elected.

Division 11 Miscellaneous

50 Death of candidate

If a candidate dies after the close of nominations and before polling day for an election:

- (a) the election is taken to have failed, and
- (b) the Electoral Commissioner must proceed to conduct a new election.

51 Decisions of Electoral Commissioner and returning officer

If the Electoral Commissioner or the returning officer is permitted, or required, under this Part to make a decision on any matter relating to the conduct of an election, the decision of the Electoral Commissioner or returning officer on that matter is final.

52 Notification of result of election

As soon as practicable after the Electoral Commissioner has been notified by the returning officer that one or more candidates in an election have been elected, the Electoral Commissioner must cause:

- (a) the Minister to be notified in writing, and
 - (b) a notice to be published in the Gazette,
- of the name or names of the candidate or candidates who have been elected.

53 Retention of electoral papers

- (1) After one or more candidates in an election have been elected, the returning officer must forward to the Electoral Commissioner all nomination papers, ballot-papers, applications to vote by post or before polling day, rolls and other papers connected with the election.
- (2) The Electoral Commissioner must retain those papers for at least 3 months after polling day.

54 Offences

A person is guilty of an offence if the person:

- (a) votes, or attempts to vote, in an election in which the person is not entitled to vote, or
- (b) makes a false or wilfully misleading statement:
 - (i) to the returning officer in connection with an election, or
 - (ii) in any document that the person furnishes for the purposes of an election, or
- (c) obstructs the proceedings at the polling place or at the office of the returning officer, or
- (d) enters any occupied booth at the polling place.

Maximum penalty: 50 penalty units.

Part 3 Leases

Division 1 Applications for leases and forms of leases

55 Applications for leases (cf *Lord Howe Island (General) Regulation 1994*, cl 6)

- (1) For the purposes of section 21 (4) of the Act, Form 2 is the prescribed form.
- (2) For the purposes of section 22 (4) of the Act, Form 3 is the prescribed form.

56 Form of lease in perpetuity (cf *Lord Howe Island (General) Regulation 1994*, cl 7)

A lease in perpetuity under section 21 of the Act (including a lease issued under section 23 (4B) (a) (i) of the Act) must be in Form 4.

Division 2 Transfers, subleases and surrenders

57 Application for consent to transfer or sublease (cf *Lord Howe Island (General) Regulation 1994*, cl 9)

- (1) For the purposes of section 23 (2) of the Act, Form 5 is the prescribed form of application for consent to the transfer of the whole or a part of the land comprised in a lease or to the grant of a sublease.
- (2) If a written agreement for sale has been entered into, a duly certified copy of the agreement must accompany the application. The application must be lodged within 3 months after the date of execution of the agreement.
- (3) If the application is for consent to transfer part only of the land comprised in a lease, a sketch of the proposed subdivision of the land must accompany the application.

58 Lodgment of transfer of lease (cf *Lord Howe Island (General) Regulation 1994*, cl 10)

- (1) For the purposes of section 23 (1) (a) of the Act, Form 6 is the prescribed form of transfer of a lease.
- (2) A transfer of the whole or a part of the land comprised in a lease:
 - (a) must be lodged at the Island office of the Board, and
 - (b) must be accompanied by the relevant fee.

59 Execution of transfer (cf *Lord Howe Island (General) Regulation 1994*, cl 11)

A transfer must be executed by both the transferor and the transferee.

60 Transferred lease remains subject to unfulfilled conditions (cf *Lord Howe Island (General) Regulation 1994*, cl 15)

A lease that is transferred remains subject to all conditions not complied with at the time of transfer and to all forfeitures incurred.

61 Surrender of lease (cf *Lord Howe Island (General) Regulation 1994*, cl 16)

- (1) An instrument of surrender of a lease under section 22A of the Act:
 - (a) must be lodged at the Island office of the Board, and
 - (b) must be signed by the lessee.
- (2) For the purposes of section 22A of the Act, Form 7 is the prescribed form.

62 Register of leases (cf *Lord Howe Island (General) Regulation 1994*, cl 17)

- (1) The Board is to keep a register containing particulars of leases under the Act.

- (2) The register is to be kept available at the Island office of the Board for inspection by members of the public (on payment of a fee, if any, fixed by the Board under section 15 of the Act).

Division 3 Annual rent for leases

63 Application of this Division

This Division applies in relation to annual rent payable for the year commencing 1 January 2005 and for each year after that.

64 Annual rent for lease in perpetuity

The annual rent for a lease in perpetuity under section 21 of the Act is to be no more than \$150 plus \$0.215 per square metre of land comprised in the lease.

65 Annual rent for special lease

The annual rent for a lease granted under section 22 of the Act (Special leases) is to be no more than \$50 plus \$0.017 per square metre of land comprised in the lease.

66 Reduction of annual rent for eligible pensioners

- (1) The annual rent for a lease referred to in clause 64 that is held by an eligible pensioner is, on application to the Board and on production to the Board of evidence sufficient to enable it to calculate the amount of the reduction, to be reduced in accordance with this clause.
- (2) The amount by which rent payable in respect of a lease is required to be reduced is:
 - (a) if, at the relevant date, the applicant is the sole holder of the lease or holds the lease with one or more jointly eligible occupiers but with no other person—50% of that rent, or
 - (b) if, at the relevant date, the applicant holds the lease with one other person who is not a jointly eligible occupier, or with two or more other persons, any of whom is not a jointly eligible occupier—an amount that bears to 50% of that rent the same proportion as the interests (as between themselves) of the applicant and any jointly eligible occupiers in the lease bear, as at the relevant date, to the interests (as between themselves) of all the lessees in the lease.
- (3) If the full or partial amount of the rent payable under clause 64 for a lease is paid in relation to a year in which a person becomes an eligible pensioner, the Board may, on application under this clause, refund so much of the rent as it sees fit.
- (4) In this clause:

eligible pensioner, in relation to a lease, means a person who:

- (a) is the holder, or one of the holders, of the lease, and
- (b) occupies a dwelling situated on the land comprised in the lease as his or her sole or principal place of residence, and
- (c) is a member of a class of persons prescribed by the regulations under the *Local Government Act 1993* for the purposes of the definition of **eligible pensioner** in that Act.

jointly eligible occupier, in relation to a lease held by an eligible pensioner with one or more other persons, means a person who:

- (a) is the spouse of that eligible pensioner, or
- (b) is another eligible pensioner, or
- (c) if another eligible pensioner and his or her spouse have the same sole or principal place of dwelling—is the spouse of that other eligible pensioner,

and whose sole or principal place of residence is the same as that of that first mentioned eligible pensioner.

relevant date, in relation to an application for the reduction of rent under this clause, means:

- (a) if the application is made on or after the day on which the rent is due and payable—that day, or
- (b) if the application is made before the day on which the rent is due and payable—the date of the application.

spouse, in relation to an eligible pensioner, includes a person with whom the eligible pensioner is in a de facto relationship, within the meaning of the *Property (Relationships) Act 1984*.

Division 4 Miscellaneous

67 Appeals or references to Land and Environment Court (cf *Lord Howe Island (General) Regulation 1994*, cl 18)

An appeal or reference to the Land and Environment Court under section 24 of the Act (in regard to determinations or redeterminations by the Board of rent, fair market value of improvements or sums for goodwill) may be made within 28 days after the determination or redetermination.

68 Fees (cf *Lord Howe Island (General) Regulation 1994*, cl 19)

- (1) Section 184 (1) (c) of the *Crown Lands Act 1989* (regulation-making power with respect to the charging of fees, costs or deposits) applies to matters arising under the

provisions of Part 4 of the Act (Land tenure).

- (2) Accordingly, the fees specified opposite the matters listed in Schedule 2 are payable to the Board in respect of those matters.

Part 4 Licensing of tourist accommodation and other commercial undertakings

69 Meaning of tourist accommodation (cf *Lord Howe Island (General) Regulation 1994*, cl 3 (1), definition of “tourist accommodation”)

In this Part:

tourist accommodation means public accommodation that is provided predominantly for tourists to the Island as a commercial undertaking.

70 Licensing of tourist accommodation and other commercial undertakings (cf *Lord Howe Island (General) Regulation 1994*, cl 23)

(1) A person must not:

- (a) provide tourist accommodation or carry on any other commercial undertaking on the Island, or
- (b) use premises for the provision of tourist accommodation or for the carrying on of any other commercial undertaking,

except in accordance with a licence granted by the Board for that purpose.

(2) A licensee must not refuse or fail to produce the licensee’s licence for inspection on being requested to do so by the Board.

Maximum penalty: 50 penalty units.

71 Inspection of licensed premises (cf *Lord Howe Island (General) Regulation 1994*, cl 24)

- (1) The Board may carry out, at any reasonable time, an inspection of any premises to which a licence relates.
- (2) A person must not hinder or obstruct the Board while the Board is carrying out such an inspection.

Maximum penalty: 50 penalty units.

72 Duration of licences

Except during any period of suspension, a licence continues to be in force until such time as it is cancelled or, in the case of a licence that is granted for a specified term, when that term expires.

73 Transfer of licences (cf [Lord Howe Island \(General\) Regulation 1994](#), cl 26)

A licence is not transferable unless the proposed transferee and the Board have consented in writing to the transfer.

74 Alteration of conditions of licences (cf [Lord Howe Island \(General\) Regulation 1994](#), cl 27)

The conditions of a licence may be altered, modified, added to or revoked by the Board at any time during the currency of the licence, either on its own motion or at the request of the licensee.

75 Cancellation of licences (cf [Lord Howe Island \(General\) Regulation 1994](#), cl 28)

A licence may be suspended or cancelled by the Board for a breach of any condition of the licence.

76 Applications for tourist accommodation licences (cf [Lord Howe Island \(General\) Regulation 1994](#), cl 29)

- (1) An application for a licence for the provision of tourist accommodation must be accompanied by a plan showing particulars, including the room numbers, of the premises to be licensed.
- (2) The room numbers shown on the application must correspond to numbers permanently affixed on the rooms of the premises to be licensed.
- (3) A plan is not required if the application is for a licence to replace an expiring licence and the particulars of the premises have not changed.

Part 5 Protection of the environment

Division 1 Natural substances

77 Removal or destruction of coral (cf [Lord Howe Island \(General\) Regulation 1994](#), cl 31)

- (1) A person must not, except in accordance with the approval of the Board, wilfully break off, remove, destroy or damage any coral on the Island.

Maximum penalty: 50 penalty units.

- (2) An approval under this clause may be granted for scientific or aquarium purposes only.

78 Portion of coral reef closed to unauthorised persons (cf [Lord Howe Island \(General\) Regulation 1994](#), cl 32)

A person must not, except in accordance with the approval of the Board, enter on that portion of the coral reef that is situated on the western side of Lord Howe Island between the northern side of South Passage and the southern side of North Passage.

Maximum penalty: 50 penalty units.

79 Removal or destruction of substances forming part of the Island (cf *Lord Howe Island (General) Regulation 1994*, cl 33)

- (1) A person must not, except in accordance with the approval of the Board, remove any stone, rock, shell, earth, sand, clay or gravel on the Island.

Maximum penalty: 50 penalty units.

- (2) If an act constitutes an offence under both section 32 of the Act and this clause and the offender has been punished under section 32 of the Act, the offender is not liable to be punished under this clause for the same act.

Division 2 Flora and fauna

80 Removal or destruction of flora (cf *Lord Howe Island (General) Regulation 1994*, cl 34)

- (1) A person must not, except in accordance with the approval of the Board:

(a) cut, fell, remove, damage or destroy on the Island, or

(b) have in his or her possession on the Island for removal or otherwise,

the whole or any part of any tree, shrub, fern, creeper, vine, palm, plant, flower, seed, herbage or other vegetative cover that is native to the Island.

Maximum penalty: 50 penalty units.

- (2) This clause does not prevent:

(a) the harvesting of crops grown for human consumption or fodder, or

(b) the maintenance of an established garden, lawn or nature strip.

- (3) If an act constitutes an offence under both section 32 of the Act and this clause and the offender has been punished under section 32 of the Act, the offender is not liable to be punished under this clause for the same act.

81 Protection of stag beetles

- (1) A person must not, except in accordance with the approval of the Board, damage any eggs, or capture, trap, injure or kill the larval or adult form, of any of the following invertebrates:

(a) *Lamprima insularis* (stag beetle),

(b) *Figulus howe* (stag beetle).

- (2) A person must not, except in accordance with the approval of the Board, remove from the Island the whole or any part of:

- (a) the eggs, or
 - (b) whether dead or alive, the larval or adult form,
- of an invertebrate listed in subclause (1).

Maximum penalty: 50 penalty units.

82 Importation of seeds and plants (cf *Lord Howe Island (General) Regulation 1994*, cl 35)

- (1) A person must not bring onto the Island a palm seed or palm plant or any part of a palm seed or palm plant.

Maximum penalty: 50 penalty units.

- (2) A person must not, except in accordance with the approval of the Board, bring onto the Island any other seed or plant or any part of any other seed or plant.

Maximum penalty: 50 penalty units.

- (3) An approval under this clause may be granted to persons generally, without the necessity for an application, or to a particular person.

83 Importation of animals and birds (cf *Lord Howe Island (General) Regulation 1994*, cl 36)

- (1) A person must not bring a cat or goat onto the Island.

Maximum penalty: 50 penalty units.

- (2) A person must not, except in accordance with the approval of the Board, bring any other animal or bird onto the Island.

Maximum penalty: 50 penalty units.

- (3) The Board must not grant an approval under subclause (2) in respect of a dog unless:

- (a) the dog is free of disease, and
- (b) a veterinary practitioner (within the meaning of the *Veterinary Practice Act 2003*) has certified that the dog is desexed or is permanently incapable of reproduction.

- (4) Despite subclause (3) (b), the Board may grant approval for the bringing of a dog (such as a trained sniffer dog, a dog trained in search and rescue or a specialist hunting dog) onto the Island for a short period for a specified project.

- (5) This clause does not prevent a person with a disability from bringing an assistance animal (within the meaning of the *Companion Animals Act 1998*) onto the Island.

- (6) In this clause:

animal means any animal, whether vertebrate or invertebrate, and at whatever stage

of development.

84 Seizure of illegally imported seeds, plants, animals or birds (cf *Lord Howe Island (General) Regulation 1994*, cl 37)

Any seed, plant, part of a seed or plant, animal or bird that is brought on to the Island in contravention of this Division:

- (a) may be seized by the Board, and
- (b) may be destroyed or otherwise disposed of by the Board if, by a date specified by the Board, arrangements satisfactory to the Board have not been made for its removal from the Island.

85 Noxious plants (cf *Lord Howe Island (General) Regulation 1994*, cl 38)

- (1) The plants listed in Schedule 3 are, under section 38 (2) (g) (iv) of the Act, declared to be noxious.
- (2) The Board may take such measures as it considers necessary to control plants declared to be noxious.

86 Keeping of goats (cf *Lord Howe Island (General) Regulation 1994*, cl 39)

- (1) A person must not, except in accordance with the approval of the Board, keep a goat on the Island.

Maximum penalty: 50 penalty units.

- (2) The Board must not grant approval for the keeping of a goat on the Island unless a veterinary practitioner (within the meaning of the *Veterinary Practice Act 2003*) has certified that the goat, if male, has been desexed or is permanently incapable of reproduction.

- (3) A person must not:

- (a) keep any goat that the person owns other than on land that the person lawfully occupies under the Act, or
- (b) permit any such goat to stray from that land.

Maximum penalty: 50 penalty units.

87 Poultry not to be permitted to stray

A person must not:

- (a) keep any poultry that the person owns other than on land that the person lawfully occupies under the Act, or
- (b) permit any such poultry to stray from that land.

Maximum penalty: 50 penalty units.

Division 3 Miscellaneous

88 Waste management services (cf *Lord Howe Island (General) Regulation 1994*, cl 40)

- (1) The Board may establish and maintain waste management depots and provide services for the collection of waste.
- (2) The Board may issue directions as to the manner in which waste is to be dealt with by persons on the Island and as to the collection of waste.
- (3) A person who contravenes a direction under subclause (2) is guilty of an offence.

Maximum penalty: 50 penalty units.

Part 6 Motor vehicles

89 Meaning of motor vehicle (cf *Lord Howe Island (General) Regulation 1994*, cl 3 (1), definition of "motor vehicle")

In this Part:

motor vehicle means a vehicle (other than an aircraft or a vessel) propelled by volatile spirit, steam, gas, oil or electricity and includes:

- (a) an incomplete or partially constructed motor vehicle, or
- (b) the chassis, body, frame or remains of a motor vehicle, or
- (c) a trailer or caravan.

90 Approval to import motor vehicles (cf *Lord Howe Island (General) Regulation 1994*, cl 41 and 42)

- (1) A person must not, except in accordance with the approval of the Board, bring a motor vehicle onto the Island.

Maximum penalty: 50 penalty units.

- (2) An application for approval to bring a motor vehicle onto the Island must relate to one vehicle only.

91 Seizure of unlawfully imported motor vehicles (cf *Lord Howe Island (General) Regulation 1994*, cl 43)

- (1) The Board may direct the person in charge of a motor vehicle that has been brought onto the Island without the Board's approval to remove the vehicle from the Island.
- (2) A person to whom such a direction is given must not, without reasonable excuse, fail to comply with the direction.

Maximum penalty: 50 penalty units.

- (3) If the person, without reasonable excuse, fails to comply with the direction, the Board may seize the motor vehicle and cause it to be removed from the Island.
- (4) The Board may recover the cost of removal from the person as a debt.
- (5) In this clause:

person in charge, in relation to a motor vehicle, means:

- (a) the person for the time being having control of the motor vehicle, or
- (b) if no person has control of the motor vehicle for the time being—the person for the time being entitled to possession of the motor vehicle, whether as owner, lessee, licensee or otherwise.

92 Hire of motor vehicles (cf *Lord Howe Island (General) Regulation 1994*, cl 44)

- (1) A person must not, except in accordance with the approval of the Board, hire or offer for hire a motor vehicle to any other person for use on the Island.

Maximum penalty: 50 penalty units.

- (2) This clause applies whether or not the person from whom the motor vehicle is or is to be hired, or any employee or agent of that person, is to drive or ride the motor vehicle.

93 Use of motor vehicles (cf *Lord Howe Island (General) Regulation 1994*, cl 45)

- (1) A person must not drive or ride a motor vehicle on the Island unless the Board has given its approval to the use of that vehicle on the Island.
- (2) A person who has obtained the approval of the Board under subclause (1) may drive or ride the motor vehicle concerned only in accordance with that approval.

Maximum penalty: 50 penalty units.

94 Production of driver licence (cf *Lord Howe Island (General) Regulation 1994*, cl 46)

- (1) The Board may, at any time, direct the driver or rider of a motor vehicle on the Island to produce his or her driver licence.
- (2) A person must not fail to comply with such a direction or, in purported compliance with such a direction, give a false name or address.

Maximum penalty: 50 penalty units.

Part 7 Mooring

95 Definitions (cf *Lord Howe Island (General) Regulation 1994*, cl 3 (1), definitions of “Lagoon” and

“mooring apparatus”)

In this Part:

Lagoon means the area consisting of:

- (a) the Lord Howe Island Lagoon situated on the western side of Lord Howe Island, and
- (b) the foreshores of that Lagoon, and
- (c) the shores of Blackburn Island, and
- (d) any passage through the reefs adjacent to that Lagoon.

mooring apparatus means any structure or device capable of being used to secure a vessel while afloat, but does not include the anchor of a vessel at anchor.

96 Unlawful construction or removal of moorings (cf [Lord Howe Island \(General\) Regulation 1994](#), cl 47)

- (1) A person must not, except in accordance with the approval of the Board:
 - (a) construct any mooring apparatus in the Lagoon, or
 - (b) remove any mooring apparatus from the Lagoon.

Maximum penalty: 50 penalty units.

- (2) An approval referred to in subclause (1) may not be transferred between persons and may be cancelled by the Board at any time.

97 Approval for use of mooring apparatus (cf [Lord Howe Island \(General\) Regulation 1994](#), cl 48)

- (1) A person must not, except in accordance with the approval of the Board, attach a vessel to a mooring apparatus in the Lagoon.

Maximum penalty: 50 penalty units.

- (2) An approval referred to in subclause (1) may not be transferred between persons and may be cancelled by the Board at any time.

98 Anchoring of vessels (cf [Lord Howe Island \(General\) Regulation 1994](#), cl 49)

- (1) A person must not, except in accordance with the approval of the Board, anchor a vessel in the Lagoon.

Maximum penalty: 50 penalty units.

- (2) This clause does not apply to:
 - (a) a vessel attached to a mooring apparatus, or

- (b) a vessel with an overall length of less than 5 metres, or
- (c) a vessel that is owned by a person who resides on the Island.

99 Removal of unlawfully moored or anchored vessels (cf *Lord Howe Island (General) Regulation 1994*, cl 50)

- (1) The Board may direct the person in charge of a vessel that is unlawfully moored or anchored in the Lagoon to remove the vessel.
- (2) A person to whom such a direction is given must not, without reasonable cause, fail to comply with the direction.

Maximum penalty: 50 penalty units.

- (3) If the person, without reasonable cause, fails to comply with the direction the Board may carry out the direction and recover the cost from the person as a debt.
- (4) In this clause:

person in charge, in relation to a vessel, means:

- (a) the person for the time being having control of the vessel, or
- (b) if no person has control of the vessel for the time being—the person for the time being entitled to possession of the vessel, whether as owner, lessee, licensee or otherwise.

Part 8 Miscellaneous

100 Restrictions relating to use of public reserves and vacant Crown land

- (1) This clause applies to the following land:
 - (a) the Lord Howe Island Permanent Park Preserve,
 - (b) Crown land that is reserved or dedicated for a public purpose under section 19 of the Act,
 - (c) vacant Crown land.
- (2) The Board may direct a person to remove from any land to which this clause applies any item that is deposited on the land, whether or not the item was deposited by the person, if:
 - (a) in the opinion of the Board, the size, shape, nature or volume of the item makes the place where it is deposited disorderly or detrimentally affects the proper use of that place, and
 - (b) the person owns, or is otherwise responsible for, the item.

- (3) A person to whom such a direction is given must not, without reasonable cause, fail to comply with the direction.

Maximum penalty: 50 penalty units.

- (4) If the person, without reasonable cause, fails to comply with the direction the Board may remove the item and recover the cost of doing so from the person as a debt.
- (5) The Board may, by displaying a notice to that effect in a conspicuous position in or in the immediate vicinity of land to which this clause applies and which is specified in the notice, prohibit the use of the land for a purpose specified, or otherwise than for a purpose specified, in the notice.
- (6) A person must not, without reasonable cause, fail to comply with the terms of a notice erected under this clause.

Maximum penalty: 50 penalty units.

- (7) Section 632 of the *Local Government Act 1993* applies to a notice under this clause as if references in that section to:

- (a) a council were references to the Board, and
- (b) a public place within an area of a council were references to the land to which this clause applies.

101 Camping on the Island (cf *Lord Howe Island (General) Regulation 1994*, cl 51)

A person must not, except in accordance with the approval of the Board, camp on a public reserve or on any vacant Crown land on the Island.

Maximum penalty: 50 penalty units.

102 Discharge of firearms (cf *Lord Howe Island (General) Regulation 1994*, cl 52)

- (1) A person must not, except in accordance with the approval of the Board, discharge a firearm on the Island.

Maximum penalty: 50 penalty units.

- (2) This clause does not apply to:

- (a) a person in the exercise of his or her functions as a police officer, or
- (b) a person in the exercise of his or her functions as a member of the armed forces of the Commonwealth, or of any government that is allied or associated with the Commonwealth in any war or joint military exercise in which the Commonwealth is engaged, or
- (c) a person carrying out lawful activities on land:

- (i) that the person lawfully occupies under the Act, or
- (ii) on to which the person has entered with the consent of a person who lawfully occupies the land under the Act.

103 Sale and consumption of alcohol (cf *Lord Howe Island (General) Regulation 1994*, cl 53)

- (1) The Board may acquire alcohol and store, sell and distribute alcohol on the Island.
- (2) A person must not, except in accordance with the approval of the Board, sell or distribute alcohol on the Island.

Maximum penalty: 50 penalty units.

- (3) The Board may prohibit the drinking of alcohol in an area in a public place by erecting conspicuous signs on the outer limits of the area and at suitable intervals in the area that indicate that the drinking of alcohol is prohibited in that area.
- (4) If the Board does so, the area is an alcohol-free zone for the purposes of this clause.
- (5) A person must not drink alcohol in an alcohol-free zone.

Maximum penalty: 50 penalty units.

- (6) In this clause:

alcohol means ethanol, any liquid containing ethanol and any liquor within the meaning of the *Liquor Act 1982*.

104 Island airport

- (1) The Board may prohibit the following from entering the Island airport, or a part of the Island airport, specified in the notice:
 - (a) all persons, or all persons other than persons of a class specified in the notice,
 - (b) all vehicles, or all vehicles of a class specified in the notice,

by displaying a notice to that effect in a conspicuous position in or in the immediate vicinity of the Island airport.

- (2) A person must not, without reasonable cause, fail to comply with the terms of a notice erected under this clause.

Maximum penalty: 50 penalty units.

- (3) Section 632 of the *Local Government Act 1993* applies to a notice under this clause as if references in that section to:
 - (a) a council were references to the Board, and

(b) a public place within an area of a council were references to the Island airport.

(4) Despite subclause (3), section 632 (2A) (b) of the *Local Government Act 1993* does not apply to a notice under this clause.

(5) A person at the Island airport, or in charge of a vehicle at the airport, must comply with any reasonable direction given to the person by the Board in relation to the operation of the airport.

Maximum penalty: 50 penalty units.

(6) A reference in this clause to the Island Airport is a reference to the land identified as Portion 180 on the map marked "LHI 134-2909 NOTATION PLAN" held at the Island office of the Board.

105 Directions relating to operation of wharf (cf *Lord Howe Island (General) Regulation 1994*, cl 55)

A person who is on any wharf on the Island, or who is in charge of a vessel at any such wharf, must comply with any reasonable direction given to the person by the Board in relation to the operation of the wharf.

Maximum penalty: 50 penalty units.

106 Human waste storage and treatment facilities (cf *Lord Howe Island (General) Regulation 1994*, cl 58)

(1) A person must not, except in accordance with the approval of the Board, install, construct or alter a septic tank or other human waste storage or treatment facility or a drain connected to any such tank or facility.

Maximum penalty: 50 penalty units.

(2) The Board may order the owner or occupier of land or premises to repair, maintain or replace a septic tank or other human waste storage or treatment facility on the land or premises if the tank or facility is not in a safe or healthy condition.

(3) The provisions of the *Local Government Act 1993* applicable to the making and enforcement by a council of orders apply to an order under this clause as if references in that Act to a council were references to the Board.

(4) A person who fails to comply with an order given to the person under this clause is guilty of an offence.

Maximum penalty: 50 penalty units.

107 Power of entry (cf *Lord Howe Island (General) Regulation 1994*, cl 59)

(1) For the purpose of enabling the Board to exercise its functions, a person authorised by the Board may enter any premises.

- (2) The provisions of Part 2 of Chapter 8 (section 201 excepted) of the *Local Government Act 1993* apply to and in respect of the entry onto premises under this clause as if references in that Part to:
- (a) a council were references to the Board, and
 - (b) the general manager were references to the manager or the chairperson of the Board,
 - (c) the Act were references to the *Lord Howe Island Act 1953*.
- (3) A person must not obstruct, hinder or interfere with a person authorised under subclause (1) in the exercise of functions under this clause.

Maximum penalty: 50 penalty units.

108 Procedure for Board meetings

- (1) A regulation made under item 2 of Schedule 6 to the *Local Government Act 1993* in relation to the conduct of meetings of a council and its committees applies in relation to the conduct of meetings of the Board.
- (2) Such a regulation applies in relation to the conduct of meetings of the Board with such modifications as the Board determines are necessary.

109 Code of conduct

Section 440 of the *Local Government Act 1993* applies to the Board as if in that section references to:

- (a) a council were references to the Board, and
- (b) a councillor were references to a member of the Board, and
- (c) an ordinary election were references to an election required to be conducted under section 9A (b) of the Act.

110 Charge on tourists (cf *Lord Howe Island (General) Regulation 1994*, cl 60)

- (1) A tourist to the Island must pay to the Board a charge not exceeding \$50.
- (2) A tourist who fails to pay the charge is guilty of an offence.
- Maximum penalty: 50 penalty units.
- (3) No such charge is payable in respect of a person, or persons of a class, exempted by the Board.
- (4) The charge must be paid in the manner and at a place specified by the Board.

111 Penalty notice offences and penalties

- (1) For the purposes of section 37B of the Act:
- (a) each offence created by a provision of this Regulation specified in Column 1 of Schedule 4 is an offence for which a penalty notice may be served, and
 - (b) the penalty prescribed for each such offence is the amount specified opposite the provision in Column 2 of that Schedule.
- (2) If the reference to a provision in Column 1 of Schedule 4 is qualified by words that restrict its operation to specified kinds of offences, an offence created by the provision is a prescribed offence only if it is an offence of a kind so specified or committed in the circumstances so specified.

112 Savings arising on repeal of former regulations

Any act, matter or thing that, immediately before the repeal of the [Lord Howe Island \(Elections\) Regulation 1999](#) or the [Lord Howe Island \(General\) Regulation 1994](#), had effect under either of those regulations is taken to have effect under this Regulation.

Schedule 1 Forms

(Clause 3 (2))

Form 1 Nomination of candidate

(Clause 17 (1))

We, being entitled to be included in the roll for the election of members of the Lord Howe Island Board, nominate *[full name in block letters]* of *[place of residence as enrolled]* as a candidate for that election.

Date:

Name (in full) of each nominator	Signature of each nominator	Place of residence (as enrolled) of each nominator	Occupation of each nominator
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I, *[name of candidate]*, consent to the nomination.

Candidate's signature:

Note—

This form must be completed by at least 2 nominators.

Form 2 Application for lease in perpetuity for the purpose of residence

(Clause 55 (1))

[Lord Howe Island Act 1953](#), section 21

I, *[full name]*, being an Islander, apply for a lease in perpetuity of the land described below (and shown on the accompanying sketch—*required if the land is not a measured portion*) for the purpose of residence.

I have made the declaration on the back of this form.

Signed this day of , 20 .

Signature:

Address:

To the Chairperson,
Lord Howe Island Board.

Note—

The following declaration is to be published on the back of this form.

Declaration by applicant

I, *[full name]*, of *[address]*, solemnly declare and affirm that I am the applicant for a lease in perpetuity for the purpose of residence of the land described on the front and that the answers to the questions in the Schedule are correct.

Schedule

- 1 On what grounds do you claim to be an Islander?
- 2 What is the date and place of your birth?
- 3 (a) What is your marital status?
 (b) State the age and sex of any children living with you, or dependent on you.
- 4 Do you or does your spouse or any child mentioned in answer to question 3 hold any land? If so, give area, location, particulars of title and state by whom it is held.
- 5 Are you already residing on the land the subject of this application? If so, state how long you have been in residence.
- 6 Are there any improvements on the land the subject of this application? Give brief particulars and estimated values of the improvements.

I make this solemn declaration as to the above matters according to the law in this behalf made and subject to the punishment by law provided for any wilfully false statement in any such declaration.

Signature of Declarant:

Made before me at this day of , 20 .

Signature of a Justice of the Peace, Commissioner for Affidavits or Notary Public:

Form 3 Application for special leases

(Clause 55 (2))

Lord Howe Island Act 1953, section 22

I, *[full name]* apply for special lease for the purpose of *[state use intended to be made of land]* of the land described below (and shown on the accompanying sketch—*required if the land is not a measured portion*):

I have made the declaration on the back of this form.

Signed this day of , 20 .

Signature:

Address:

To the Chairperson,
Lord Howe Island Board.

Note—

The following declaration is to be published on the back of this form.

Declaration by applicant

I, *[full name]*, of *[address]*, solemnly declare and affirm that I am the applicant for a special lease of the land described on the front and that the answers to the questions in the Schedule are correct.

Schedule

- 1 (a) Are you the holder of a lease in perpetuity for residence under section 21 of the *Lord Howe Island Act 1953*?
- (b) If you are not the holder at present, have you applied for such a lease?
- 2 (a) Are you already using the land the subject of this application?
- (b) If so, for what purpose and for how long?
- 3 Are there any improvements on the land the subject of this application? Give brief particulars and estimated values of the improvements.

I make this solemn declaration as to the above matters according to the law in this behalf made and subject to the punishment by law provided for any wilfully false statement in any such declaration.

Signature of Declarant:

Made before me at this day of , 20 .

Signature of a Justice of the Peace, Commissioner for Affidavits or Notary Public:

Form 4 Lease in perpetuity for the purpose of residence

(Clause 56)

Lord Howe Island Act 1953, section 21

Pursuant to section 21 of the *Lord Howe Island Act 1953 (the Act)*, I, the Minister administering the Act, grant to *[name of lessee]*, his or her executors, administrators and assigns a lease in perpetuity for the purpose of residence of a parcel of land containing *[specify number of hectares]* hectares and being measured portion *[specify portion details]* situated on Lord Howe Island (not including any roads within the boundaries of that portion) being Lease in Perpetuity No. *[specify No.]* (shown in the attached plan), together with all rights, easements and appurtenances to hold the land in perpetuity subject to the Act and the regulations made under the Act and to the following conditions:

Signature:

Minister administering the *Lord Howe Island Act 1953*

Note—

Persons dealing with this lease are warned that a search should be made in the Lord Howe Island office of the Lord Howe Island Board in order to ascertain whether the lease is still current or whether it has been forfeited or cancelled.

Form 5 Application for consent to transfer a lease or part of a lease or to sublet a lease

(Clause 57 (1))

Lord Howe Island Act 1953, section 23

Pursuant to section 23 of the *Lord Howe Island Act 1953*, I, *[full name]*, of *[address]*, the holder of the lease(s) specified in Schedule 1, apply for the consent of the Minister (*and the approval of the Governor*) to transfer such lease(s) or part(s) of such lease(s) by way of (*sale, mortgage*) or sublet such lease(s) *[give particulars of subletting]* to *[proposed transferee or sublessees]*, of *[address]*.

Declaration marked "A" has been made by me.

I enclose a certified copy of the original agreement or contract for the sale of such lease(s) or part(s) of such lease(s) and apply for approval of that agreement or contract. *[Strike out if there is no written agreement or contract]*

I also enclose a sketch showing the subdivision line or lines and indicating the part(s) of the lease(s) proposed to be transferred. *[Strike out if it is proposed to transfer whole of lease(s)]*

Schedule 1

Class of Lease (Perpetual or Special)	No of Lease	Area	Portion No
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Signature of person proposing to transfer or sublet:

Address to which notices are to be sent:

To the Chairperson,
Lord Howe Island Board.

Declaration "A" by persons proposing to transfer or sublet

I, *[full name]*, of *[address]*, being the holder of the lease(s) specified in Schedule 1, solemnly declare and affirm that the answers to the questions in Schedule 2 are correct in every particular.

Schedule 2

- 1 What is the date of your birth?
- 2 What are your reasons for wishing to transfer your lease(s) or part(s) of such lease(s) or sublet your lease(s)? State fully.
- 3 Are there any improvements on the land proposed to be transferred? Give brief particulars and estimated values of the improvements.

What is the amount:
(a) of the consideration agreed on?
- 4 (b) of the sum for goodwill included in the consideration?
- 5 Have you made any agreement or contract for the sale of the lease(s) or part(s) of such lease(s)?

If so, a certified copy should be lodged with this application.
- 6 Is the person to whom you propose to transfer your lease(s) or part(s) of such lease(s) or sublet your lease(s) an Islander?
- 7 If the person to whom you propose to transfer your lease(s) or part(s) of such lease(s), or sublet your lease(s), as the case may be, is not an Islander, is there any Islander residing on the Island who desires and is in a position to take such transfer or sublease? Indicate the grounds for your answer to this question.

I make this solemn declaration as to the above matters according to the law in this behalf made and subject to the punishment by law provided for any wilfully false statement in any such declaration.

Signature of Declarant:

Made before me at this day of , 20 .

Signature of a Justice of the Peace, Commissioner for Affidavits or Notary Public:

Declaration "B" by proposed transferee or sublessee

I, [full name], of [address], solemnly declare and affirm that I am the person to whom [the proposed transferor] proposes to transfer the lease(s) or part(s) of such lease(s) (or to sublet) the lease(s) particularised in Schedule 1, that the transaction is entered into in good faith, and that Schedule 3 contains a true statement of all lands now held by me, my spouse and my children living with me or dependent on me.

Schedule 3

Class of holding	No of holding	Area	Portion No	By whom held (spouse or child)
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If no land is held write "Nil".

I solemnly declare and affirm that my sole object in acquiring the land is in order that I may hold and use it for my own exclusive benefit, and that the answers to the questions in Schedule 4 are true and correct in every particular.

Schedule 4

- 1 Are you an Islander? If so, state the grounds on which you claim to be one.
- 2 What is the date and place of your birth?
 - (a) What is your marital status?
- 3 (b) State the age and sex of any children living with you or dependent on you.

What is the amount:
 - (a) of the consideration agreed on?
 - (b) of the sum for goodwill included in the consideration?

- 5 What are your reasons for wishing to acquire the subject lease(s) or part(s) of such lease(s)? Indicate the use you intend to make of the land.

I make this solemn declaration as to the above matters according to the law in this behalf made and subject to the punishment by law provided for any wilfully false statement in any such declaration.

Signature of Declarant:

Address to which notices are to be sent:

Made before me at this day of , 20 .

Signature of a Justice of the Peace, Commissioner for Affidavits or Notary Public:

Form 6 Transfer of lease

(Clause 58 (1))

[Lord Howe Island Act 1953](#), section 23

I, [full name] of [address] in consideration of the sum of [specify sum] (the receipt of which is acknowledged) transfer by way of [sale, mortgage] to [full name] of [address] all [my, its] estate and interest in the land described as follows:

Class of lease (perpetual or special)	No of lease (indicate if part only)	Area	Portion No
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Signed at the day of , 20 .

Signed in my presence:

Witness

Signature of transferor

I accept this transfer.

Signed in my presence:

Witness

Signature of transferee

Notes—

- (1) The witness must be a legal practitioner, Justice of the Peace, Notary Public, Commissioner for Affidavits or bank manager.
- (2) If executed under seal, the usual attestation clause is also to be inserted. If signed by virtue of a power of attorney, the memorandum of non-revocation on the back of this form is to be signed by the attorney before a witness.
- (3) The following memorandum is to be published on the back of this form.

Memorandum of non-revocation of power of attorney

[I/We] have had no notice of revocation of the Power of Attorney registered No *[specify No.]* Miscellaneous Register under the authority of which *[I/we]* have just signed the transfer.

Signed at the day of , 20 .

Witness:

Notes—

- (1) All alterations and interlineations must be initialled in the left margin by the attesting witnesses.
- (2) Transfers, other than those by way of discharge of mortgage to the registered mortgagor or a legal representative or by way of mortgage or sub-mortgage, cannot be accepted for registration unless duly stamped or endorsed "exempt from duty" or bearing other evidence of having been submitted to the Chief Commissioner of State Revenue for assessment.
- (3) A transfer involving lands in the name of a deceased person (whether mortgagor or mortgagee) cannot be accepted unless the first transfer involving each such holding has been marked "Registration not opposed" by the Chief Commissioner of State Revenue.

Form 7 Instrument of surrender

(Clause 61 (2))

Lord Howe Island Act 1953, section 22A

I, *[full name]* of *[address]* being the holder of the land described below, surrender the land to the Crown, intending that the land will vest in the Crown as Crown land.

[Description of land to be surrendered that will enable it to be identified]

Signed at this day of , 20 .

Signature of surrenderor:

Signed in my presence by *[full name of surrenderor]* who is personally known to me.

Signature of Justice of the Peace:

I, *[full name of mortgagee if surrender is by mortgagor]*, the mortgagee under Mortgage No *[specify No.]*, join in this surrender.

Signed at this day of , 20 .

Signature of mortgagee:

Signed in my presence by *[full name of mortgagee]* who is personally known to me.

Signature of Justice of the Peace:

I, *[full name of mortgagor if surrender is by mortgagee]*, being the mortgagor of the land described above, join in this surrender.

Signed at this day of , 20 .

Signature of mortgagor:

Signed in my presence by [full name of mortgagor] who is personally known to me.

Signature of Justice of the Peace:

Accepted for and on behalf of the Crown this day of , 20 .

Signature of Minister:

Signed in my presence by the Minister administering the [Lord Howe Island Act 1953](#), who is personally known to me.

Signature of Witness:

Schedule 2 Fees

(Clauses 3 (1) and 68 (2))

Item No		Fee (\$)
1	On an application being made under section 21 of the Act for a lease in perpetuity	60.00
2	On an application being made under section 22 of the Act for a special lease	60.00
3	On the issue of a lease in perpetuity under section 21 or 23 (4B) (a) (i) of the Act	50.00
4	On an application being made under section 22 (2) of the Act for extension of the term of a special lease	60.00
5	On an application being made under section 23 of the Act for consent to transfer or sublet a lease	50.00
6	On an application being made under section 23 of the Act for a certificate of the Minister that a person on whom a lease has devolved under a will or intestacy is entitled to hold the lease	50.00
7	On an application being made under section 23 of the Act for permission to enter into possession under a mortgage or for consent to foreclose a mortgage	50.00
8	On lodgment of a transfer of the whole or part of a lease under clause 58	40.00
	And for each lease or part of a lease after the first included in the transfer	17.00
9	If it is necessary to investigate evidence (submitted in support of a transfer) that a person is entitled to transfer a lease or to execute the transfer on behalf of a proposed transferee, an additional	40.00

Schedule 3 Noxious plants

(Clause 85 (1))

Botanical Name	Common Name
<i>Ageratina adenophora</i>	Crofton weed
<i>Anredera cordifolia</i>	Madeira vine

<i>Arundinaria spp.</i>	Arundinaria reed
<i>Arundo donax</i>	Giant reed or elephant grass
<i>Asparagus asparagoides</i>	Bridal creeper
<i>Bambusa spp.</i>	Bamboo
<i>Chrysanthemoides monilifera</i>	Bitou bush
<i>Cotoneaster glycophylla</i>	Cotoneaster
<i>Gloriosa superba</i>	Glory lily
<i>Lantana camara</i>	Lantana
<i>Lilium formosanum</i>	Tiger lily
<i>Lycium ferocissium</i>	African boxthorn
<i>Melia azedarach</i>	White cedar
<i>Ochna serrulata</i>	Ochna
<i>Pittosporum undulatum</i>	Sweet pittosporum
<i>Protoasparagus aethiopicus</i>	Asparagus fern
<i>Protoasparagus plumosus</i>	Climbing asparagus
<i>Psidium cattleianum</i>	Cherry guava
<i>Ricinus communis</i>	Castor oil plant
<i>Schefflera actinophylla</i>	Umbrella tree
<i>Setaria palmifolia</i>	Palm grass
<i>Toxicodendron succadmenum</i>	Rhus tree

Schedule 4 Penalty notice offences

(Clause 111)

Column 1	Column 2
Provision	Penalty
Clause 54	\$110
Clause 70 (1) or (2)	\$330
Clause 71 (2)	\$330
Clause 77 (1)	\$110
Clause 78	\$110
Clause 79 (1)	\$330

Clause 80 (1)	\$330
Clause 81 (1) or (2)	\$330
Clause 82 (1) or (2)	\$330
Clause 83 (1) or (2)	\$330
Clause 86 (1) or (3)	\$330
Clause 87	\$330
Clause 88 (3)	\$330
Clause 90 (1)	\$330
Clause 91 (2)	\$330
Clause 92 (1)	\$330
Clause 93 (1) or (2)	\$330
Clause 94 (2)	\$330
Clause 96 (1)	\$330
Clause 97 (1)	\$330
Clause 98 (1)	\$330
Clause 99 (2)	\$330
Clause 100 (3)	\$330
Clause 100 (6)	\$330
Clause 101	\$330
Clause 102 (1)	\$330
Clause 103 (2)	\$1100
Clause 103 (5)	\$330
Clause 104 (2) or (5)	\$330
Clause 105	\$330
Clause 106 (1) or (4)	\$330
Clause 107 (3)	\$330
Clause 110 (2)	\$330