

Queensland



Subordinate Legislation 1994 No. 14

*Community Services (Torres Strait) Act 1984*

**COMMUNITY SERVICES (TORRES STRAIT)  
AMENDMENT REGULATION (No. 1) 1994**

**TABLE OF PROVISIONS**

Section	Page
1 Short title . . . . .	3
2 Amended regulation . . . . .	3
3 Replacement of s 4 (Repeals) . . . . .	3
4 Forms . . . . .	3
4 Amendment of s 5 (Interpretation) . . . . .	3
5 Replacement of s 6 (Election of members of councils) . . . . .	4
6 Election of councillors . . . . .	4
6 Omission of s 10 (Voting) . . . . .	4
7 Amendment of s 11 (Vacancy) . . . . .	4
8 Amendment of s 12 (Vacating office of member) . . . . .	4
9 Omission of s 14 (Publication of notices) . . . . .	5
10 Amendment of s 15 (Appointment of clerk) . . . . .	5
11 Replacement of s 16 (Fees for presiding officer and poll clerk) . . . . .	5
16 Fees . . . . .	5
12 Insertion of new s 18B . . . . .	5
18B Approved forms for annual financial statements . . . . .	6
13 Omission of s 28 (Administration of Islanders' Estates) . . . . .	6
14 Amendment of Schedule 2 (Fees) . . . . .	6

*Community Services (Torres Strait) Amendment No. 14, 1994*  
*(No. 1)*

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15	Replacement of Schedule 3 (Form) . . . . .	6
	SCHEDULE 3	
	ELECTIONS	

### **Short title**

1. This regulation may be cited as the *Community Services (Torres Strait) Amendment Regulation (No. 1) 1994*.

### **Amended regulation**

2. The *Community Services (Torres Strait) Regulation 1985* is amended as set out in this regulation.

### **Replacement of s 4 (Repeals)**

3. Section 4—

*omit, insert—*

### **‘Forms**

‘4.(1) The prescribed forms under the Act are the forms approved by the chief executive of the department.

‘(2) A person may ask the chief executive to supply a copy of a document setting out an approved form.

‘(3) The chief executive must comply promptly with the request.’.

### **Amendment of s 5 (Interpretation)**

4.(1) Section 5 (definitions “**fine option order**”, “**rules for the conduct of elections**” and “**the Act**”)—

*omit.*

(2) Section 5—

*insert—*

‘“**councillor**” means a member of an Island Council, and includes the chairperson;

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

### **Replacement of s 6 (Election of members of councils)**

5. Section 6—

*omit, insert—*

### **‘Election of councillors**

‘6. Chapter 5 of the *Local Government Act 1993* applies to Island Councils with the changes shown in Schedule 3.’.

### **Omission of s 10 (Voting)**

6. Section 10—

*omit.*

### **Amendment of s 11 (Vacancy)**

7.(1) Section 11(2)(b)—

*omit ‘2 weeks’, insert ‘2 months’.*

(2) Section 11—

*insert—*

‘(2B) If a vacancy that should be filled under subsection (2)(b) is not properly filled, the Minister may appoint a qualified person to fill the vacancy.’.

(3) Section 11(3)—

*omit.*

### **Amendment of s 12 (Vacating office of member)**

8. Section 12(g)—

*omit, insert—*

‘(g) on a review under the *Judicial Review Act 1991*, the member is found to be unlawfully elected or appointed, or ineligible to continue to act as, a member of the Council; or

(h) the member becomes a local government employee (other than a

person employed under a Commonwealth funded community development project for Aborigines or Torres Strait Islanders); or

- (i) the member is elected to another office at a by-election; or
- (j) the member otherwise ceases to hold the office before the end of the member's term of office.'.

**Omission of s 14 (Publication of notices)**

**9.** Section 14—

*omit.*

**Amendment of s 15 (Appointment of clerk)**

**10.** Section 15—

*insert—*

**'(2)** An Island Council may appoint a person to act as its clerk during—

- (a) any vacancy, or all vacancies, in the position; or
- (b) any period, or all periods, when the clerk is absent from duty or cannot, for another reason, perform the clerk's duties.'.

**Replacement of s 16 (Fees for presiding officer and poll clerk)**

**11.** Section 16—

*omit, insert—*

**'Fees**

**'16.** An Island Council must pay a presiding officer and issuing officer the fees set out in Schedule 2.'.

**Insertion of new s 18B**

**12.** After section 18A—

*insert—*

**‘Approved forms for annual financial statements**

**‘18B.** When the chief executive of the department approves a form to be used under section 30A of the Act, the chief executive must have regard to—

- (a) the need to provide for full disclosure of an Island Council’s financial operations during a financial year; and
- (b) the accounting standards.’.

**Omission of s 28 (Administration of Islanders’ Estates)**

**13.** Section 28—

*omit.*

**Amendment of Schedule 2 (Fees)**

**14.** Schedule 2—

*omit* ‘Poll Clerk’, *insert* ‘issuing officer’.

**Replacement of Schedule 3 (Form)**

**15.** Schedule 3—

*omit, insert—*

## ‘SCHEDULE 3

### ‘ELECTIONS

section 6

(Chapter 5 of the *Local Government Act 1993* applied to an Island Council)<sup>1</sup>

#### ‘PART 1—GENERAL

##### ‘Triennial elections

‘214. Councillors of *an Island Council* are to be elected once every 3 years.

##### ‘Types of elections

‘215.(1) A triennial or fresh election of *a councillor of an Island Council* is an election for the whole of the *Council’s* area.

‘(2) (*omitted*)

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

##### ‘Elections to be held on a Saturday

‘216. Every *election for an Island Council* must be held on a Saturday.

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<sup>1</sup> Textual changes are indicated by italic script (other than the citations of the Electoral Acts).

**‘Dates of triennial elections**

‘217.(1) Triennial elections are to be held on *the same day as triennial elections under the Local Government Act 1993*.

‘(2) *(omitted)*

**‘Date of later triennial elections**

‘218. *(omitted)*

**‘Date of by-elections**

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

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

**‘PART 2—RETURNING OFFICERS**

**‘Clerk is returning officer**

‘220.(1) The *clerk of an Island Council* is the returning officer for every election of a councillor of the *Island Council*.

‘(2) This section is subject to section 221 (Appointment of returning officer if *clerk* cannot act).

**‘Appointment of returning officer if clerk cannot act**

‘221.(1) If the *clerk* cannot perform the duties of the returning officer for an election because of other duties of office, the *clerk* must appoint someone else as returning officer for the election.

‘(2) If the *clerk* believes the *clerk* cannot properly perform the duties of returning officer for an election because of a possible conflict of interest, the *clerk* must ask the Minister to appoint someone else as returning officer for

the election.

‘(3) The Minister may appoint another person as returning officer for the election.

### ‘Returning officer’s duty for by-election

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

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

## ‘PART 3—VOTERS ROLL

### ‘Returning officer must compile voters roll

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

### ‘Qualification for enrolment on voters roll

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

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

### **‘Cut-off day for voters roll**

**‘225.** A voters roll must be compiled to 1 of the following dates—

- (a) (*omitted*)
- (b) for a triennial election—31 January in the year of the election;
- (c) for a by-election to fill a vacancy in the office of a *councillor of an Island Council*—at least 5 days, and not more than 7 days, after the *display*, under section 222 (Returning officer’s duty for by-election), of notice of the day of the by-election.

### **‘Use of electoral roll when practicable**

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

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

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

### **‘Requirements of voters roll**

**‘227.(1)** A voters roll for an election must—

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

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

**‘Voters roll to be open to inspection and purchase**

**‘228.(1)** A voters roll for an election is open to inspection.

**‘(2)** Copies of the voters roll must be available for purchase at the *Island Council’s office*.

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

**‘Electoral registrars to help returning officers**

**‘229.** An electoral registrar under the *Electoral Act 1992* must give a returning officer the assistance that the returning officer reasonably requires to compile a voters roll for *an election for an Island Council*.

**‘PART 4—VOTING**

**‘Compulsory voting**

**‘230.** Voting at an election for *an Island Council* is compulsory and each elector is entitled to 1 vote only.

**‘System of voting**

**‘231.** The system of voting at an election for a councillor is—

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

**‘PART 5—(omitted)**

**‘PART 6—CONDUCT OF ELECTIONS**

*‘Division 1—Preliminary*

**‘Conduct of elections**

**‘236.** An election must be conducted under this Part.

**‘Chief executive of department may approve forms**

**‘237.(1)** The chief executive of the department may approve forms for the purposes of this Part.

*‘(2) However, the chief executive may only approve forms that are approved forms under section 237 of the Local Government Act 1993, with any necessary changes.*

*‘Division 2—Electoral officers*

**‘Returning officer**

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

**‘Presiding officers**

**‘239.(1)** The returning officer—

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

**‘(2)** A presiding officer at a polling booth is responsible for the proper

conduct of the poll at the booth and for carrying out the other duties for the election that are required by the returning officer.

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

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

### **‘Issuing officers**

‘240.(1) The returning officer, or a presiding officer with the returning officer’s approval, may appoint adults to—

- (a) give ballot papers, declaration envelopes and declaration forms to electors; and
- (b) perform the other duties for the election that are required by the presiding officer.

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

### **‘Declaration by issuing officers**

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

### **‘Returning officer may act through authorised issuing officer**

‘242. If—

- (a) a returning officer is required under this Part to do anything; and
- (b) the returning officer authorises an issuing officer to do the thing; and
- (c) the issuing officer does the thing;

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

### **‘Supply and use of voters rolls**

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

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

### ***‘Division 3—Candidates for election or appointment***

#### **‘Qualification for nomination**

‘244.(1) *(omitted)*

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

‘(3) *(omitted)*

#### **‘Prohibition of dual candidature**

‘245. *(omitted)*

#### **‘Leave to Island Council employee to contest election**

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

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

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

‘(4) *(omitted)*

**‘Endorsed candidates must identify endorsement**

‘247. (omitted)

*‘Division 4—Nomination on candidates for election*

**‘Calling for nominations**

‘248. (omitted)

**‘Who may nominate**

‘249. (omitted)

**‘How and when nomination is given**

‘250. (omitted)

**‘Deposit to accompany nomination**

‘251. (omitted)

**‘Certificate of returning officer**

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

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

‘(2) (omitted)

‘(3) The returning officer is not obliged to look beyond—

- (a) the form of nomination and payment of the *nomination fee*; and
- (b) the voters roll; and
- (c) documentary evidence produced by the nominee or a nominator that the nominee or a nominator is an elector for the election.

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

### ‘Display of nominations

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

### ‘Termination of candidature before noon on nomination day

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

‘(2) If this happens—

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

### ‘Death of candidate

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

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

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

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

- (a) the nominees are taken to have been elected; and
- (b) the returning officer must, as soon as practicable after the

nomination day, *display* a notice in the approved form in a *conspicuous position in the area of the Island Council* for which the election was to be held, that the nominees are taken to have been elected.

‘(2) If—

- (a) no-one is nominated as a candidate for an election *and the Council does not make an appointment under section 11(4) of the regulation*; or
- (b) the number of candidates nominated is less than the number required to be elected;

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

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

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

### ‘Procedure if number of candidates exceeds number required

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

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

‘(3) The notice must—

- (a) be in the approved form; and
- (b) specify—
  - (i) the day the poll will be conducted; and
  - (ii) the names of all candidates properly nominated for election in the order decided under section 273 (Order of listing of candidates’ names); and

- (iii) the location of all ordinary polling booths to be used for taking the ballot in the poll; and
  - (iv) that the ordinary voting hours are from 8 a.m. to 6 p.m.; and
  - (c) be displayed in a conspicuous position at the place of nomination and, if that place is not the *Island Council's office, at the office*; and
  - (d) *(omitted)*
- ‘(4) Display of a notice under subsection (3)(c) must—
- (a) start as soon as practicable after noon on the nomination day; and
  - (b) continue until the close of the poll.

#### **‘Supply of voters roll**

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

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

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

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

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

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

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

‘(4) Despite subsection (1), the *Minister* may, by Gazette notice, direct

that proceedings for holding an election of all councillors of the *Island Council* start again.

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

#### ‘Disposal of *nomination fees* generally

‘260.(1) As soon as practicable after the declaration of the result of a poll, each candidate’s *nomination fee* must be refunded to the candidate if—

- (a) the candidate is elected; or
- (b) (*omitted*)
- (c) (*words omitted*) the number of votes received by the candidate is more than 4% of the total number of formal votes cast in the election.

‘(2) All other candidates’ *nomination fees* become the property of the *Island Council* and must be paid into its operating fund.

#### ‘If successful candidate dies

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

#### ‘Extension of times

‘262.(1) This section applies if—

- (a) a nomination day is specified (*words omitted*) for the election; or
- (b) a polling day is specified under section 257 (Procedure if number of candidates exceeds number required) for the election.

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

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

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

***‘Division 5—(omitted)***

***‘Division 6—Polling booths***

**‘Polling booths—general**

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

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

- (a) the floor area for taking the ballot is designated in the notice of the conduct of the poll under section 257 (Procedure if number of candidates exceeds number required); and
- (b) the *Council* ensures that no liquor will be sold or supplied in that area during the taking of the ballot.

**‘(3)** The returning officer—

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

**‘Provision of ordinary polling booths**

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

‘(2) The returning officer may—

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

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

‘(3) If, after publication of the notice under section 257 (Procedure if number of candidates exceeds number required), the returning officer arranges for the use of an ordinary polling booth, the officer must give public notice—

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

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

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

### ‘Declaration of mobile polling booths

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

‘(2) If the returning officer is satisfied a part of the *Island Council’s* area does not have enough electors to justify the use of an ordinary polling booth in the part, the returning officer may arrange for the whole or part of any place in the part to be available as a mobile polling booth to enable electors in the part to vote in the poll.

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

be used for voting.

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

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

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

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

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

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

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

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

### **‘Privacy of voting**

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

***‘Division 7—Ballot boxes, papers and other documents***

**‘Ballot boxes generally**

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

**‘(2)** A ballot box must—

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

**‘Requirements of ballot papers**

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

**‘(2)** A ballot paper must—

- (a) be in the approved form; and
- (b) be of material that, when folded, the vote cast by the elector on the paper is effectively concealed; and
- (c) be attached to a butt that—
  - (i) is not part of the ballot paper; and
  - (ii) is perforated to allow the ballot paper to be easily detached from the butt; and
  - (iii) is numbered in regular arithmetical sequence, starting with the numeral 1 and proceeding by intervals of one whole numeral, so that each butt for the *area of the Island Council* for which the poll is conducted has a unique number; and
- (d) show the name of each candidate for election as required by subsection (3); and
- (e) if the names of 2 or more candidates are so similar as to be likely to cause confusion to electors—must contain an appropriate

description or addition, in the returning officer's opinion, to distinguish the persons' names; and

(f) *(omitted)*

**'(3)** A ballot paper must—

- (a) contain the name of each candidate once only by showing first the surname followed by the given name or names; and
- (b) show the names of the candidates in the order decided under section 273 (Order of listing of candidates' names).

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

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

**'272.** *(omitted)*

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

**'273.(1)** The order in which names of candidates for election are to be listed on ballot papers and notices under section 257 (Procedure if number of candidates exceeds number required) is to be decided under this section.

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

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

- (a) write the name of each candidate on a separate sheet of paper; and
- (b) ensure that each piece of paper is of the same kind, shape, size and colour; and
- (c) put each separate piece of paper in a separate envelope and, if it is necessary to fold the piece of paper to make it fit in the envelope, fold each piece of paper in the same way to make each the same size and thickness; and
- (d) ensure that each envelope is opaque and of the same kind, shape, size and colour; and
- (e) after each piece of paper has been placed in an envelope, seal the envelope; and

- (f) put all the envelopes in a container and shuffle them; and
- (g) draw out the envelopes, 1 at a time; and
- (h) as each envelope is drawn out, open it and record the name of the candidate shown on the piece of paper in the envelope.

‘(4) The order in which the names are recorded is the order in which the names are to appear on the ballot paper and notices under section 257 (Procedure if number of candidates exceeds number required).

‘(5) The returning officer must—

- (a) give written notice to each candidate of the day, time and place at which the order of candidates’ names will be decided; and
- (b) allow the candidate, or the candidate’s representative, to be present.

### **‘Distribution of ballot papers**

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

‘(2) The returning officer must prepare a delivery note in the approved form in triplicate for each parcel of ballot papers supplied by the returning officer to presiding officers at polling booths.

‘(3) The approved form must—

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

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

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

- (a) check the contents against the details shown in the delivery note; and
- (b) complete the particulars prescribed by the delivery note; and

(c) sign the form of acknowledgment included in the delivery note.

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

(a) if another presiding officer is available—the other presiding officer; or

(b) if another presiding officer is not available—a responsible person.

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

‘(8) The presiding officer must return 1 copy of the delivery note to the returning officer and retain the other copy of the delivery note until it is given to the returning officer with the sealed parcels of ballot papers under section 308 (Preliminary counting by presiding officer).

#### ‘Correction of errors etc.

‘275. Any error, omission or delay in respect of any voters roll, ballot papers or other document to be used in a poll may be corrected by procedures directed by the *Minister*, by Gazette notice.

### ‘Division 8—Scrutineers

#### ‘Candidates’ entitlement to scrutineers

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

(a) before and at all times when electors may vote in the booth; and

(b) at all times during the examination or counting.

### **‘Appointment of scrutineers**

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

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

### **‘Proof of identification**

**‘278.** A scrutineer must—

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

### **‘Powers of scrutineers**

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

- (a) in a polling booth—before taking the ballot in the poll starts to inspect ballot boxes; and
- (b) in a polling booth and any office of the presiding officer at the booth—when electors may vote in the booth; and
- (c) in a polling booth or other place—to watch the examination of declaration envelopes and counting of votes.

**‘(2)** A scrutineer may—

- (a) object to an issuing officer’s decision on a person’s entitlement to vote at the election; and
- (b) object to the acceptance or rejection of a ballot paper by the returning or presiding officer; and
- (c) record details of persons who vote at the election at a polling booth and remove the record from the booth.

### ***‘Division 9—Voting generally***

#### **‘Who may vote**

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

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

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

#### **‘Procedure for voting at a polling booth**

- ‘282.(1) Subject to *section 284* (Arrangements for electors with disability) (*words omitted*), an elector, other than a declaration voter, must vote at a polling booth under the procedures set out in this section.
- ‘(2) The elector must enter a polling booth for the *Island Council’s* area during voting hours at the booth.
- ‘(3) In the polling booth, the elector must give the elector’s full name and address to an issuing officer.
- ‘(4) If the elector—
  - (a) has a ballot paper and declaration envelope for the election; and
  - (b) does not intend to cast a declaration vote;the elector must return the ballot paper and declaration envelope to the

issuing officer.

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

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

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

- (a) the issuing officer is satisfied the person is an elector mentioned in section 290(a), (b) or (c) (Who must cast a declaration vote in ordinary elections); or
- (b) the issuing officer suspects, on reasonable grounds, that the person is not entitled to vote at the election;

the person may only cast a declaration vote.

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

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

‘(10) On being given the ballot paper, the elector must, without delay—

- (a) go alone into an unoccupied voting compartment in the polling booth; and
- (b) there, in private, mark a vote on the ballot paper in accordance with Division 11 (Marking of ballot papers); and
- (c) fold the ballot paper, concealing the vote, and put it in the appropriate ballot box in the polling booth; and
- (d) leave the polling booth.

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

‘283.(1) An issuing officer must—

- (a) record in the approved form the giving of a ballot paper to a person who has returned a ballot paper and declaration envelope

to the officer under section 282(4) (Procedure for voting at a polling booth); and

- (b) attach to the form all ballot papers and declaration envelopes returned to the officer; and
- (c) give the form and the attached documents to the presiding officer.

‘(2) The presiding officer must set aside the form and attached documents in the officer’s custody for separate identification under section 308(1)(g)(ii) (Preliminary counting by presiding officer).

#### ‘Arrangements for electors with disability

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

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

‘(3) However, the issuing officer must—

- (a) before taking any action under subsection (2), inform the scrutineers present of the proposed action; and
- (b) allow 1 scrutineer for each candidate to be present at the voting place; and
- (c) ensure that after the ballot paper is marked, it is—
  - (i) folded to conceal the vote; and
  - (ii) put in an envelope or, if the vote is a declaration vote, a declaration envelope; and
- (d) seal the envelope; and
- (e) if—
  - (i) the vote is a declaration vote—put the sealed declaration envelope in the appropriate ballot box inside the polling booth; or
  - (ii) if the vote is not a declaration vote—open the envelope inside the polling booth in the presence of any scrutineers,

ensuring the ballot paper remains folded, and put the folded ballot paper in the appropriate ballot box.

‘(4) The issuing officer must ensure that, as far as practicable—

- (a) for a declaration vote—section 294 (How declaration vote may be cast at a polling booth) is complied with when the elector votes; or
- (b) for another vote—section 282 (Procedure for voting at a polling booth) is complied with when the elector votes.

‘(5) Subsections (2) and (3) apply to all types of voting under this Division.

#### **‘Arrangements for electors at institutions**

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

‘(2) Before taking action under subsection (1), the issuing officer must inform the scrutineers present of the proposed action.

‘(3) When visiting an elector in an institution, the issuing officer must—

- (a) take to the elector—
  - (i) a ballot paper or a declaration form, ballot paper and declaration envelope; and
  - (ii) a ballot box; and
  - (iii) anything else necessary to enable the elector to vote; and
- (b) if a scrutineer wishes—be accompanied by the scrutineer.

‘(4) The issuing officer must ensure that, as far as practicable—

- (a) for a declaration vote—section 294 (How declaration vote may be cast at a polling booth) is complied with when the elector votes; or
- (b) for another vote—section 282 (Procedure for voting at a polling booth) is complied with when the elector votes.

### **‘Arrangements for electoral visitor voting**

**‘286.** *(omitted)*

### **‘Help for electors in voting**

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

**‘(2)** The person may help the elector in any of the following ways—

- (a) if asked by the elector—stating the names of candidates;
- (b) acting as interpreter;
- (c) explaining the ballot paper and the requirements of Division 11 (Marking of ballot papers) about its marking;
- (d) marking, or helping to mark, the ballot paper in the way the elector wishes;
- (e) folding the ballot paper and putting it into a ballot box or a declaration envelope;
- (f) sealing a declaration envelope or putting it into a ballot box.

**‘(3)** Subsections (1) and (2) apply to all types of voting.

**‘(4)** This section applies despite any of the following provisions—

- section 282(10) (Procedure for voting at a polling booth)
- section 294 (How declaration vote may be cast at a polling booth)
- section 297 (Casting a declaration vote by post).

### **‘Adjournment of poll**

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

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

booth may adjourn the conduct of the poll at the booth.

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

‘(4) The returning officer must give public notice of the day fixed—

- (a) *by displaying a notice in a conspicuous position* in the relevant part of the *Island Council’s* area; and
- (b) in other ways the returning officer considers appropriate.

### ***‘Division 10—Declaration voting***

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

‘289. The following electors may cast a declaration vote—

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

- (i) because of section 58 of the *Electoral Act 1992*; or
- (ii) under an arrangement under section 62 of the *Electoral Act 1992* because of section 104 of the *Electoral Act 1918* (Cwlth).

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

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

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

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

**‘291.** (*omitted*)

### **‘How declaration vote is cast**

**‘292.** Subject to section 282 (Procedure for voting at a polling booth), an elector who may or must make a declaration vote must cast the vote by—

- (a) if the elector cannot enter a polling booth because of illness, disability or advanced pregnancy—going to a place close to a polling booth and voting at that place; or
- (b) going to a polling booth in the *Island Council’s* area during voting hours at the booth and following the procedures set out in section 294 (How declaration vote may be cast at a polling booth); or

- (c) going to the *Council's office* before polling day and following the procedures set out in section 298 (Declaration voting before polling day); or
- (d) if the elector is an elector mentioned in section 289 (Who may cast a declaration vote) (*words omitted*)—using the ballot paper and declaration envelope given to the elector by the returning officer, and following the procedures set out in section 297 (Casting a declaration vote by post).

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

**‘293.(1)** An elector mentioned in section 289 (Who may cast a declaration vote) may apply to the returning officer, or a presiding officer for the election, for a ballot paper and a declaration envelope.

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

**‘(3)** The returning officer or presiding officer must, as soon as practicable, give a ballot paper and the approved declaration envelope to the applicant if—

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

**‘(4)** If the returning officer or presiding officer is satisfied the applicant is an elector mentioned in section 290 (Who must cast a declaration vote in ordinary elections), the officer—

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

**‘(5)** If the returning officer or presiding officer is satisfied the applicant has properly completed the declaration form, the officer must, as soon as practicable, give a ballot paper and the approved declaration envelope to the applicant.

**‘(6)** The things given to an applicant under subsection (3) or (5) must be accompanied by an unsealed prepaid post envelope addressed to the

returning officer and bearing the words ‘Ballot paper—(words omitted) (insert name of *Island Council*’s area)’.

**‘How declaration vote may be cast at a polling booth**

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

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

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

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

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

**‘Distribution of ballot papers to electors for postal ballot election**

**‘295.** (omitted)

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

**‘296.** The issuing officer who gives a ballot paper and declaration envelope under section 293 (Distribution of ballot papers to electors who may or must cast declaration vote) (*words omitted*) must—

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

### **‘Casting a declaration vote by post**

**‘297.(1)** An elector who has received a ballot paper and declaration envelope under section 293 (Distribution of ballot papers to electors who may or must cast declaration vote) (*words omitted*) must, before 6 p.m. on polling day—

- (a) sign the declaration on the declaration envelope in the presence of an adult, and have the adult sign the envelope as witness; and
- (b) in private, mark a vote on the ballot paper in accordance with Division 11 (Marking of ballot papers); and
- (c) fold the ballot paper, put it in the declaration envelope and seal the envelope; and
- (d) put the sealed declaration envelope containing the ballot paper in the prepaid post envelope mentioned in section 293(6) (*words omitted*) and post or give the envelope to the returning officer for the election.

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

### **‘Declaration voting before polling day**

**‘298.(1)** The returning officer must declare 1 of the following places as a polling booth to enable electors entitled to cast a declaration vote under section 289 (Who may cast a declaration vote) to cast a vote at the election before polling day—

- (a) the *Island Council’s office, or a part of the office*; or

(b) *(omitted)*

(c) if the returning officer is satisfied it is impracticable for *the Council's office* to be used as a polling booth—another convenient place in the *Council's* area.

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

‘(3) Subject to section 282(5) to (7) (Procedure for voting at a polling booth), the issuing officer must comply with the request.

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

- (a) must complete and sign the approved application form; and
- (b) must comply with section 282; and
- (c) need not complete a declaration envelope.

‘(5) If an elector is an elector who must cast a declaration vote under section 290 (Who must cast a declaration vote in ordinary elections), the elector—

- (a) must complete and sign the approved application form and declaration form; and
- (b) on being given a ballot paper and the approved declaration envelope, must comply with section 294(3) (How declaration vote may be cast at a polling booth) without delay.

‘(6) In subsection (2)—

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

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

***‘Division 11—Marking of ballot papers***

**‘Optional-preferential voting**

**‘299.** *(omitted)*

**‘First-past-the-post voting**

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

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

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

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

***‘Division 12—Replacement ballot papers***

**‘Use of replacement ballot papers**

**‘301.(1)** If, while voting at a polling booth or voting under section 284 (Arrangements for electors with disability) *(words omitted)*, a ballot paper

given to an elector is accidentally defaced or destroyed, an issuing officer must give to the elector a replacement ballot paper for use in the poll.

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

- (a) the ballot paper it replaces (the **“replaced ballot paper”**) must not have been already put in a ballot box in use in the poll; and
- (b) the elector must declare, in the approved declaration form, before the issuing officer that—
  - (i) the replaced ballot paper has been accidentally defaced or destroyed; and
  - (ii) the elector has not voted in the election; and
- (c) if the replaced ballot paper has been accidentally defaced—the elector must give the defaced ballot paper to the issuing officer; and
- (d) if the replaced ballot paper has been accidentally destroyed—the elector must give to the issuing officer, if practicable, the remains of the ballot paper; and
- (e) the issuing officer must put the defaced ballot paper, or any remains of the destroyed ballot paper, in an envelope, seal the envelope and set it aside in the officer’s custody for separate identification under section 308(1)(g)(ii) (Preliminary counting by presiding officer).

‘(3) If a ballot paper given to an elector under section 293 (Distribution of ballot papers to electors who may or must cast declaration vote) (*words omitted*) is lost in transit or is accidentally defaced or destroyed, the returning officer for the election must, before 6 p.m. on polling day, give to the elector a replacement ballot paper and the approved declaration envelope for use in the election.

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

- (a) the elector must declare, in the approved declaration form, before the issuing officer or an adult witness that—
  - (i) the ballot paper it replaces (the **“replaced ballot paper”**) has not been received by the elector or has been accidentally defaced or destroyed; and

- (ii) the elector has not voted in the election; and
- (b) if the replaced ballot paper has been accidentally defaced—the elector must put the defaced ballot paper into the elector’s original declaration envelope or a replacement declaration envelope, seal the envelope and give the envelope to the issuing officer; and
- (c) if the replaced ballot paper has been accidentally destroyed—the elector must, if practicable, put the remains of the destroyed ballot paper into the elector’s original declaration envelope or a replacement declaration envelope, seal the envelope and give the envelope to the issuing officer; and
- (d) the issuing officer must set aside the elector’s declaration envelope in the officer’s custody for separate identification under section 308(1)(g)(ii) (Preliminary counting by presiding officer).

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

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

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

### *‘Division 13—Effect of ballot papers*

#### **‘Effect of ballot papers—optional-preferential voting**

‘302. *(omitted)*

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

‘303.(1) *(omitted)*

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

- (a) the ballot paper—

- (i) must be completed in accordance with section 300 (First-past-the-post voting); or
  - (ii) must contain writing or marking indicating the elector's intended preference, or intention to vote for any particular candidate or candidates; and
- (b) the ballot paper must not contain any writing or mark (other than one authorised by this Part) by which the elector can, in the returning officer's opinion, be identified; and
  - (c) the ballot paper must have been put in the appropriate ballot box as required by this Part; and
  - (d) for a ballot paper put into a declaration envelope as required by section 297 (Casting a declaration vote by post)—
    - (i) section 297(1) must have been complied with; and
    - (ii) if the elector is an elector mentioned in section 289 (Who may cast a declaration vote) and the declaration on the envelope is witnessed by a person other than an issuing officer—the signature of the declarant must correspond to the signature of the relevant applicant under section 293 (Distribution of ballot papers to electors who may or must cast declaration vote); and
    - (iii) if the declaration envelope is posted to the returning officer—it must be received by the returning officer within 10 days after polling day.

**‘(3)** If 2 or more candidates are to be elected, a ballot paper must not be rejected merely because it indicates the elector's intention to vote for a number of candidates greater than the number to be elected.

**‘Posted vote presumed valid until contrary proved**

**‘304.** If a declaration envelope and ballot paper to which section 297 (Casting a declaration vote by post) applies is received by a returning officer by post, it must be presumed the provisions of section 297(1) have been complied with in relation to the declaration on the envelope until the contrary is proved.

### **‘Formal and informal ballot papers**

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

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

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

**‘306.(1)** This section applies if—

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

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

## ***‘Division 14—Counting of votes***

### **‘Votes to be counted in accordance with this Division**

**‘307.** Votes cast in an election are to be counted as required by this Division.

### **‘Preliminary counting by presiding officer**

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

- (a) open all ballot boxes used at the polling booth; and
- (b) identify, and keep in a separate parcel, all declaration votes; and

- (c) examine all ballot papers that are not in declaration envelopes, and—
  - (i) identify, and keep in a separate parcel, all informal ballot papers; and
  - (ii) (*words omitted*) count the number of votes for each candidate marked on all formal ballot papers, and keep the ballot papers in a separate parcel; *and*
  - (iii) (*omitted*)
- (d) prepare a written statement in duplicate in the approved form that—
  - (i) sets out, in words and numerals, the number of votes for each candidate (*words omitted*); and
  - (ii) sets out the number of declaration envelopes and informal ballot papers; and
  - (iii) is signed by the presiding officer, and the issuing officer and any scrutineers who are present and wish to sign; and
- (e) seal up in separate parcels all formal and informal ballot papers, declaration envelopes and unused ballot papers; and
- (f) endorse on each parcel a description of its contents, sign the endorsement and allow any scrutineers, who wish to do so, to countersign the endorsement; and
- (g) put into separate parcels—
  - (i) the voters roll and all books and papers used by the presiding officer in the poll with 1 copy of the statement prepared under paragraph (d); and
  - (ii) all ballot papers or remains of ballot papers set aside, under section 283(2) (Duties of issuing officer for returned papers) or 301(2)(e) or (4)(d) (Use of replacement ballot papers), for separate identification;and endorse on each parcel a description of its contents; and
- (h) endorse on each parcel—
  - (i) the name of the *area of the Island Council* for which the

election was held; and

(ii) the name of the polling booth from which the parcel has come; and

(i) sign each endorsement.

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

(a) the parcels mentioned in subsection (1); and

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

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

‘(3) A person must give to a presiding officer a receipt for the things received by the person from the presiding officer under subsection (2).

### **‘Preliminary processing of declaration votes by returning officer**

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

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

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

### **‘Procedure for processing declaration envelopes**

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

**‘(2)** If the returning officer is satisfied—

- (a) a declaration envelope has been properly completed; and
- (b) the declarant on the envelope is entitled to cast a declaration vote in the election;

the returning officer must, before opening the envelope, place a mark in ink against the declarant’s name on the voters roll.

**‘(3)** If a declaration envelope is accepted, the returning officer must take from the envelope the ballot paper without unfolding it, or allowing anyone else to unfold it, put it in a sealed ballot box and keep it there until it is dealt with in the official counting of votes.

**‘(4)** The returning officer must—

- (a) put all ballot papers (not in declaration envelopes) that are in a ballot box opened under section 309(2) (Preliminary processing of declaration votes by returning officer) into a sealed ballot box, without unfolding them, or allowing anyone else to unfold them; and
- (b) keep them there until they are dealt with in the official counting of votes.

**‘(5)** If a declaration envelope is rejected, the returning officer must set it aside in the officer’s custody for separate identification.

**‘(6)** The returning officer must seal up in separate parcels, and keep in the officer’s custody for separate identification, all opened and unopened declaration envelopes.

### **‘Official counting of votes**

**‘311.(1)** As soon as practicable after close of the poll in an election, the returning officer must follow the procedures set out in this section, in the

presence of candidates for election, or scrutineers, who wish to attend.

‘(2) First, the returning officer must ascertain from the presiding officers’ statements under section 308(2) (Preliminary counting by presiding officer)—

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

‘(3) Second, the returning officer must—

- (a) open all sealed parcels of ballot papers given to the returning officer under section 308(2); and
- (b) examine all ballot papers that are not in declaration envelopes and—
  - (i) (*words omitted*) count the number of votes cast for each candidate on formal ballot papers, and keep the ballot papers in a separate parcel; or
  - (ii) (*omitted*)

‘(4) Third, the returning officer must—

- (a) open all other ballot boxes on hand; and
- (b) identify, and keep in a separate parcel, all informal ballot papers; and
- (c) examine all formal ballot papers and—
  - (i) (*words omitted*) count the number of votes cast for each candidate on the ballot papers, and keep the ballot papers in a separate parcel; or
  - (ii) (*omitted*)

‘(5) Fourth, the returning officer must add together—

- (a) (*words omitted*) the number counted under subsections (3)(b)(i) and (4)(c)(i); or
- (b) (*omitted*)

‘(6) Fifth, the returning officer must reapply subsections (4) and (5) as

more declaration envelopes are received by the returning officer under section 297 (Casting a declaration vote by post) after close of the poll.

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

**‘312.(1)** If, while a presiding officer or returning officer is complying with section 308 (Preliminary counting by presiding officer) or 311 (Official counting of votes), a candidate or scrutineer objects to treatment of a ballot paper as informal, the officer must mark on the back of it ‘formal’ or ‘informal’ according to whether the officer’s decision is to treat it as formal or informal.

**‘(2)** If, while a presiding officer or returning officer, is complying with section 308 or 311, a candidate or scrutineer objects to the counting of a vote for a particular candidate, the officer must mark on the back of the relevant ballot paper the name of the candidate for whom it is counted.

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

**‘313.** *(omitted)*

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

**‘314.(1)** *(omitted)*

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

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

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

(iii) the candidate who receives the next highest number of votes; and so on, up to the number of persons to be elected.

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

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

‘(6) Subsection (4) has effect despite section 280 (Who may vote).

### **‘Returning officer’s duty after counting votes**

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

- (a) seal up all of the formal ballot papers, informal ballot papers, declaration envelopes, defaced ballot papers, remains of destroyed ballot papers, unused ballot papers, books and papers (other than the voters roll) of each presiding officer used in the poll; and
- (b) endorse on each parcel a description of its contents and sign the endorsement; and
- (c) allow any scrutineers, who wish to do so, to countersign the endorsement.

‘(2) The returning officer must then—

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

***‘Division 15—Actions following poll***

**‘Declaration of poll**

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

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

**‘(2)** The returning officer must—

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

**‘(3)** The returning officer must not delay complying with subsection (1) or (2) merely because some ballot papers have not been received by the returning officer, if it is clear the votes recorded on the ballot papers could not affect the result of the election.

**‘Notice of final result of poll**

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

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

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

**‘List of electors failing to vote**

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

- (a) have not been issued with ballot papers for the election; or
- (b) in the case of electors mentioned in section 289 (Who may cast a

declaration vote) (*words omitted*)—have not given their ballot papers to the returning officer.

‘(2) The returning officer must—

- (a) certify the list by declaration in the approved form; and
- (b) deposit the list with the *Island Council*; and
- (c) give a copy of the list to any person who—
  - (i) was a candidate in the election; and
  - (ii) applies to the returning officer for a copy of the list no later than 28 days after the final result of the poll is declared.

‘(3) The list is to be held in the *Island Council’s* office, in the *clerk’s* custody.

**‘Notice to elector failing to vote**

‘ 319.(1) The *Island Council*—

- (a) may cause notice under this section to be given to each elector shown on the list deposited under section 318 (List of electors failing to vote), at the elector’s address shown on the list; and
- (b) if it does give notice—must record on the list, against the elector’s name, the fact that notice has been given.

‘(2) The notice must—

- (a) show the elector’s full name and address and number on the voters roll; and
- (b) state that—
  - (i) the elector appears to have failed to vote at the election; and
  - (ii) it is an offence to fail, without a valid and sufficient reason, to vote at an election; and
- (c) require the elector to—
  - (i) state, in a form included in or with the notice, whether the elector voted and, if not, the reason for failing to vote; and
  - (ii) sign the form and post or deliver it to the *Island*

*Council's clerk* so that it is received by a specified day, not earlier than 21 days after the elector receives the notice.

‘(3) The elector must comply with the notice.

‘(4) If—

- (a) the elector is absent, or unable, because of incapacity, to comply with the notice; and
- (b) someone else who has personal knowledge of the facts satisfies the requirements of the notice;

the elector is taken to have complied with the notice.

#### **‘Recording response to notice**

‘320. The *Island Council* must record against the name of an elector who is given a notice under section 319 (Notice to elector failing to vote) on the list made under section 318 (List of electors failing to vote) whether the elector—

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

#### **‘Evidentiary value of list under s 318**

‘321. In a proceeding, a document purporting to be a list, or a copy of or extract from a list, made under section 318 (List of electors failing to vote), and to be certified by the *Island Council's clerk* is evidence of the matters contained in the document.

#### **‘Disposal of material resulting from election**

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

- (a) destroy all unused ballot papers; and
- (b) seal up in packets all other parcels sealed up under section 315 (Returning officer's duty after counting votes); and

- (c) endorse on each packet—
  - (i) a description of its contents; and
  - (ii) the name of the *area of the Island Council* for which the election was held; and
  - (iii) the polling day;and sign the endorsement; and
- (d) if the returning officer is not the *Council's clerk*—give each packet to the *clerk*.

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

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

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

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

### ‘Ballot papers as evidence

‘323. In a proceeding, a ballot paper apparently used at an election and identified by evidence as 1 of the ballot papers given to, or held by, the *Island Council's clerk* under section 322 (Disposal of material resulting from election) is evidence of the vote or votes cast in the election as recorded on the ballot paper.

### ‘Notice to Electoral Commission of certain declaration votes

‘324. As soon as practicable after the election, the returning officer must give to the Electoral Commission notice of the names and addresses of all persons permitted to vote at the election whose names are not on the voters roll, apparently because of official error, if the error relates to the keeping of an electoral roll under the *Electoral Act 1992*.

***‘Division 16—Enforcement***

***‘Subdivision A—Offences in general***

**‘False or misleading statements**

**‘325.(1)** A person must not—

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

Maximum penalty—*4 penalty units*.

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

**‘False, misleading or incomplete electoral documents**

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

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

Maximum penalty—*4 penalty units*.

**‘Bribery**

**‘327.(1)** In this section—

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

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

‘(2) A person must not—

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

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

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

Maximum penalty—*4 penalty units*.

### ‘Providing money for illegal payments

‘328. A person must not knowingly give money for—

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

Maximum penalty—*4 penalty units*.

### ‘Improperly influencing electoral officers

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

Maximum penalty—*4 penalty units*.

### ‘Interfering with election right or duty

‘330. A person must not hinder or interfere with the free exercise or performance, by another person, of another right or duty under this

regulation that relates to an election.

Maximum penalty—*4 penalty units.*

**‘Forging or uttering electoral papers**

**‘331.(1)** A person must not—

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

Maximum penalty—*4 penalty units.*

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

Maximum penalty—*4 penalty units.*

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

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

Maximum penalty—*4 penalty units.*

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

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

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

Maximum penalty—*4 penalty units.*

***‘Subdivision B—Offences about electoral advertising and information***

**‘Responsibility for election matter**

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

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

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

Maximum penalty—*4 penalty units.*

**‘(2)** The particulars are—

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

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

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

**‘Headline to electoral advertisements**

**‘335.** The proprietor of a newspaper commits an offence if—

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

compensation, is, or is to be, made for the insertion of the article or paragraph; and

- (c) the proprietor does not cause the word ‘advertisement’ to be printed as a headline to the article or paragraph in letters not smaller than 10 point or long primer.

Maximum penalty—4 *penalty units*.

### **‘Misleading voters**

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

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

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

Maximum penalty—4 *penalty units*.

### ***‘Subdivision C—Offences about voting***

#### **‘Failure to vote**

**‘337.(1)** An elector must not—

- (a) fail to vote at an election without valid and sufficient reason; or
- (b) fail to comply with the requirements of a notice given to the elector under section 319 (Notice to elector failing to vote); or
- (c) purport to comply with the requirements of a notice given to the elector under section 319, make a statement the elector knows to be false or misleading in a material particular.

Maximum penalty—1 *penalty unit*.

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

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

### **‘Leave to vote**

‘338.(1) This section applies if—

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

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

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

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

Maximum penalty—*4 penalty units.*

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

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

- (a) inside a polling booth; or
- (b) within 6 m of an entrance to a building if—
  - (i) the building is, or is part of, a polling booth; and

- (ii) either a ballot box is in the building for use in the election, or a person is in the building for the purpose of casting a vote in the election.

**‘(2) The things are—**

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

Maximum penalty—*4 penalty units.*

**‘Interrupting voting etc.**

**‘340. A person must not—**

- (a) enter or remain in a polling booth other than under this *regulation*; or
- (b) wilfully interrupt, obstruct or disturb any proceeding at an election; or
- (c) enter a voting compartment other than under this *regulation*; or
- (d) prevent a scrutineer from entering or leaving a polling place—
  - (i) during voting hours for the polling place; or
  - (ii) while votes are being counted at the polling place; or
- (e) obstruct or wilfully mislead an electoral officer in the performance of a duty.

Maximum penalty—*4 penalty units.*

**‘Influencing voting**

**341. A person must not, by violence or intimidation, influence a person’s**

vote at an election.

Maximum penalty—4 *penalty units*.

### **‘Party badges not to be worn in polling booths**

**‘342.** (*omitted*)

### **‘Voting if not entitled**

**‘343.** A person must not, at an election—

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

Maximum penalty—4 *penalty units*.

### **‘Offences relating to ballot papers**

**‘344.(1)** A person must not—

- (a) wilfully fail to comply with section 282 (Procedure for voting at a polling booth) or 297 (Casting a declaration vote by post); or
- (b) take a ballot paper out of a polling booth other than under this Part; or
- (c) place in a ballot box a ballot paper that has not been—
  - (i) given to an elector under this Part; or
  - (ii) marked by the elector.

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

- (a) a ballot paper that has been marked by anyone else; or

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

Maximum penalty—4 *penalty units*.

**‘Failure to deliver or post documents for someone else**

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

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

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

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

Maximum penalty—4 *penalty units*.

**‘Breach of confidentiality of vote**

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

**‘(2)** Subsection (1) does not apply to a proceeding in a court or a person in the performance of functions under this *regulation*.

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

Maximum penalty—4 *penalty units*.

**‘Breaking seals on parcels**

**‘347.** A person must not wilfully open or break the seal of a parcel or packet sealed under this Part unless the person is authorised under this

regulation or ordered by a court to open or break the seal.

Maximum penalty—4 *penalty units*.

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

**‘348.** A person (the **“witness”**) must not sign a declaration envelope as witness under section 297 (Casting a declaration vote by post) unless—

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

Maximum penalty—4 *penalty units*.

*‘Subdivision D—(omitted)*

### **‘PART 7—FRESH ELECTIONS**

#### **‘Requirements for fresh election**

**‘350.** *(omitted)*

#### **‘Time for fresh election**

**‘351.** *(omitted)*

#### **‘Returning officer for fresh election**

**‘352.** The returning officer for a fresh election of councillors of *an Island*

*Council* is the *Council's clerk* or, if there is no *clerk*, a person appointed by the Minister.

**‘Voters roll for fresh election**

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

**‘Other provisions of *Schedule* apply**

**‘354.** The provisions of this *Schedule* (other than this Part) apply, with all necessary changes (*words omitted*) to a fresh election as if the election were a triennial election.

**‘Extension of term of councillors**

**‘355.** (*omitted*)’.

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ENDNOTES

1. Made by the Governor in Council on 27 January 1994.
2. Notified in the Gazette on 28 January 1994.
3. Laid before the Legislative Assembly on . . .
4. The administering agency is the Department of Family Services and Aboriginal and Islander Affairs.