

Western Australia

**Local Government (Constitution)  
Regulations 1998**

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## **Local Government (Constitution) Regulations 1998**

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### CONTENTS

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#### **Part 1 — Preliminary**

- |    |                                 |   |
|----|---------------------------------|---|
| 1. | Citation                        | 1 |
| 2. | Terms used in these regulations | 1 |

#### **Part 2 — Districts and wards**

##### **Division 1 — Orders under section 2.1**

- |    |  |   |
|----|--|---|
| 3. | Interpretation                             | 2 |
| 4. | Creating a new district: consequences      | 2 |
| 5. | Changing district boundaries: consequences | 2 |
| 6. | Abolishing a district: consequences        | 4 |
| 7. | Effect of section 2.1 order on local laws  | 8 |

##### **Division 2 — Matters under Schedules 2.1 and 2.2 to the Act**

- |     |   |    |
|-----|---|----|
| 8.  | Proposals for creating, changing the boundaries of,<br>or abolishing districts (Sch. 2.1 cl. 2) | 9  |
| 9.  | Request for a poll on a recommended<br>amalgamation (Sch. 2.1 cl. 8)                            | 9  |
| 10. | Submission about changes to wards, names or<br>representation (Sch. 2.2 cl. 3)                  | 10 |

#### **Part 3 — Offices on councils**

- |      |   |    |
|------|---|----|
| 10A. | Terms used in this Part   | 11 |
| 11.  | Proposals to change the method of filling the office<br>of mayor or president (s. 2.12) | 11 |

**Contents**

---

|      |  |    |
|------|--|----|
| 11A. | Election of mayor, president, deputy mayor or deputy president by council (Sch. 2.3)   | 11 |
| 11B. | Ballot papers to be authentic (Sch. 2.3 cl. 4 and 8)                                   | 12 |
| 11C. | Spoilt ballot papers (Sch. 2.3 cl. 4 and 8)  | 12 |
| 11D. | Marking and dealing with the ballot paper (Sch. 2.3 cl. 4 and 8)                       | 12 |
| 11E. | Assistance to be given to councillors who cannot otherwise vote (Sch. 2.3 cl. 4 and 8) | 13 |
| 11F. | Declaration and notice of result of election — (Sch. 2.3 cl. 4 and 8)                  | 13 |
| 11G. | Records of election to be retained (Sch. 2.3 cl. 4 and 8)                              | 14 |
| 12.  | Disqualification for membership; serious local government offences (s. 2.22)           | 14 |
| 13.  | Oaths, affirmations and declarations (s. 2.29, 2.42)                                   | 15 |

**Part 4 — Miscellaneous**

|     |   |    |
|-----|---|----|
| 14. | Transitional provision: Certain council members (s. 9.71) | 16 |
|-----|---|----|

**Schedule 1 — Forms**

**Notes**

|  |    |
|--|----|
| Compilation table                            | 26 |
| Provisions that have not come into operation | 26 |

Western Australia

Local Government Act 1995

## **Local Government (Constitution) Regulations 1998**

### **Part 1 — Preliminary**

**1. Citation**

These regulations may be cited as the *Local Government (Constitution) Regulations 1998*<sup>1</sup>.

**2. Terms used in these regulations**

In these regulations, unless the contrary intention appears —

“**Form**” means a Form in Schedule 1;

“**section**” means a section of the *Local Government Act 1995*.

## **Part 2 — Districts and wards**

### **Division 1 — Orders under section 2.1**

#### **3. Interpretation**

- (1) If there is a reference in a provision in this Part to a district described as “district A” then a reference in that provision to “local government A” is a reference to the local government of district A.
- (2) Subregulation (1), with necessary changes, applies in respect of other districts similarly described.

#### **4. Creating a new district: consequences**

- (1) This regulation applies if an order is made under section 2.1 declaring an area of the State to be a district.
- (2) The first general meeting of the electors of the district is to be held under section 5.27 after the local government of the district accepts the annual report for its first financial year.

#### **5. Changing district boundaries: consequences**

- (1) In this regulation —  
    **“commencement”** means the commencement of the order referred to in subregulation (2).
- (2) This regulation applies if an order is made under section 2.1 changing the boundaries of a district (**“district A”**).
- (3) If as a result of the order the whole of the area of a ward of district A is severed from it, then on commencement —
  - (a) the ward is abolished; and
  - (b) the number of offices of councillor on the council of local government A is reduced by the number of offices of councillor for the ward.

- (4) If as a result of the order the area of district A incorporates a part of the area of another district (which is not abolished) (“**district B**”), then on commencement —
- (a) if under section 4.32 a person has, in respect of rateable property in that part of district B, made an enrolment eligibility claim that has been accepted and still has effect under section 4.33 immediately before commencement —
    - (i) the claim is to be taken to have been made and accepted in respect of district A on the day on which it was accepted in respect of district B; and
    - (ii) for the purposes of section 4.33, any ordinary elections of local government B held after the claim was so accepted are to be treated as if they had been held by local government A;
  - (b) the method of valuation of land used by local government B as a basis for a rate in respect of land in that part of district B immediately before commencement becomes the method of valuation to be used by local government A in respect of that land;
  - (c) if immediately before commencement that part of district B is subject to a town planning scheme that is in force under the *Town Planning and Development Act 1928*<sup>2</sup> —
    - (i) the scheme has effect in respect of that part as if it were a scheme prepared by local government A in respect of that part, approved by the Minister under that Act, and published under that Act on commencement;
    - (ii) in so far as the scheme applies to that part, local government A is taken to be the responsible authority for the purposes of that Act; and
    - (iii) in so far as the scheme applies to that part, a reference in the scheme to local government B is

to be taken to be a reference to local government A;

- (d) if a matter or procedure under a written law in relation to any land in that part of district B has not been completed before commencement, any function performed in respect of that land under that law before commencement, whether by local government B or another person, has effect as if it had been performed by local government A or that other person and the matter or procedure may be completed by local government A or that other person; and
- (e) actions and proceedings by or against local government B are not affected.

**6. Abolishing a district: consequences**

- (1) In this regulation —  
    **“commencement”** means the commencement of the order referred to in subregulation (2).
- (2) This regulation applies if an order is made under section 2.1 abolishing a district (**“district A”**).
- (3) On commencement —
  - (a) local government A is disestablished;
  - (b) all offices of members of the council of local government A cease to exist.
- (4) If on commencement the whole of the area of district A is included in the area of one other district (**“district B”**), whether by means of a boundary change to an existing district or by means of a declaration of a new district, then on commencement —
  - (a) the property, rights and liabilities of local government A become those of the local government B;
  - (b) if under section 4.32 a person has, in respect of rateable property in district A, made an enrolment eligibility



claim that has been accepted and still has effect under section 4.33 immediately before commencement —

- (i) the claim is to be taken to have been made and accepted in respect of district B on the day on which it was accepted in respect of district A; and
  - (ii) for the purposes of section 4.33, any ordinary elections of local government A held after the claim was so accepted are to be treated as if they had been held by local government B;
- (c) the method of valuation of land used by local government A as a basis for a rate in respect of land in district A immediately before commencement becomes the method of valuation to be used by local government B in respect of that land;
- (d) if immediately before commencement any land in district A is subject to a town planning scheme that is in force under the *Town Planning and Development Act 1928*<sup>2</sup> —
  - (i) the scheme has effect in respect of that area as if it were a scheme prepared by local government B in respect of that area, approved by the Minister under that Act, and published under that Act on commencement;
  - (ii) in so far as the scheme applies to that area, local government B is taken to be the responsible authority for the purposes of that Act; and
  - (iii) in so far as the scheme applies to that area, a reference in the scheme to local government A is to be taken to be a reference to local government B;
- (e) if a matter or procedure under a written law in relation to any land in district A has not been completed before commencement, any function performed in respect of that land under that law before commencement, whether

- by local government A or another person, has effect as if it had been performed by local government B or that other person and the matter or procedure may be completed by local government B or that other person;
- (f) if a matter or procedure under a written law has not been completed by local government A before commencement, the matter or procedure may be completed by local government B;
  - (g) a person who, immediately before commencement, has a contract of employment with local government A, is to be taken to have an identical contract of employment with local government B;
  - (h) a person who, immediately before commencement, holds an appointment made under a written law by local government A for the purposes of enforcing or administering that written law, becomes a person appointed by local government B for those purposes;
  - (i) a reference in any instrument, contract, written law, or proceedings made or commenced before commencement to local government A shall be read and construed as a reference to local government B;
  - (j) actions and other proceedings commenced by or against local government A and pending immediately before commencement may be continued by or against local government B; and
  - (k) actions and other proceedings which could have been brought by or against local government A may be brought by or against local government B.
- (5) If on commencement, a part of the area of district A is included in the area of another district ("**district B**"), whether by means of a boundary change to an existing district or by means of a declaration of a new district, then on commencement —
- (a) if under section 4.32 a person has, in respect of rateable property in that part of district A, made an enrolment

eligibility claim that has been accepted and still has effect under section 4.33 immediately before commencement —

- (i) the claim is to be taken to have been made and accepted in respect of district B on the day on which it was accepted in respect of district A; and
  - (ii) for the purposes of section 4.33, any ordinary elections of local government A held after the claim was so accepted are to be treated as if they had been held by local government B;
- (b) the method of valuation of land used by local government A as a basis for a rate in respect of land in that part of district A immediately before commencement becomes the method of valuation to be used by local government B in respect of that land;
- (c) if immediately before commencement that part of district A is subject to a town planning scheme that is in force under the *Town Planning and Development Act 1928*<sup>2</sup> —
  - (i) the scheme has effect in respect of that part as if it were a scheme prepared by local government B in respect of that part, approved by the Minister under that Act, and published under that Act on commencement;
  - (ii) in so far as the scheme applies to that part, local government B is taken to be the responsible authority for the purposes of that Act; and
  - (iii) in so far as the scheme applies to that part, a reference in the scheme to local government A is to be taken to be a reference to local government B;
- (d) if a matter or procedure under a written law in relation to any land in that part of district A has not been completed before commencement, any function performed in

respect of that land under that law before commencement, whether by local government A or another person, has effect as if it had been performed by local government B or that other person and the matter or procedure may be completed by local government B or that other person;

- (e) actions and other proceedings commenced by or against local government A in relation to any land, or in relation to a matter that occurred on any land, in that part of district A and pending immediately before commencement may be continued by or against local government B; and
- (f) actions and other proceedings which could have been brought by or against local government A in relation to any land, or in relation to a matter that occurred on any land, in that part of district A may be brought by or against local government B.

**7. Effect of section 2.1 order on local laws**

- (1) In this regulation —  
    **“commencement”** means the commencement of the order referred to in subregulation (2).
- (2) If as a result of an order made under section 2.1 an area of the State is declared to be a district (**“district A”**) and the area includes —
  - (a) a part of the area of a district (**“district B”**) the boundaries of which are changed by the order;
  - (b) the whole, or a part, of the area of a district (**“district C”**) that is abolished by the order; or
  - (c) a combination of the areas described in paragraphs (a) and (b),

then on commencement —

- (d) the local laws that applied in that part of the area of district B immediately before the commencement

- continue to apply in respect of that part of the area of district B that is included in district A;
- (e) the local laws that applied in the whole, or that part, of the area of district C immediately before the commencement continue to apply in respect of the whole, or that part, of the area of district C that is included in district A;
  - (f) the local laws of local government C continue to apply in respect of the whole, or that part, of the area of district C that is included in district A; and
  - (g) the local laws of local governments B and C, in so far as they continue to apply in respect of those areas —
    - (i) are to be administered and enforced by local government A; and
    - (ii) subject to Division 2 of Part 3 of the Act, may be amended or repealed by local government A,as if they were local laws of local government A.

#### **Division 2 — Matters under Schedules 2.1 and 2.2 to the Act**

**8. Proposals for creating, changing the boundaries of, or abolishing districts (Sch. 2.1 cl. 2)**

A proposal by affected electors under clause 2 of Schedule 2.1 to the Act is to be in the form of Form 1.

**9. Request for a poll on a recommended amalgamation (Sch. 2.1 cl. 8)**

A request by electors under clause 8 of Schedule 2.1 to the Act asking for a recommendation of the Advisory Board that districts be abolished and amalgamated to be put to a poll of electors of the districts is to be in the form of Form 2.

**10. Submission about changes to wards, names or representation (Sch. 2.2 cl. 3)**

A submission by affected electors under clause 3 of Schedule 2.2 to the Act is to be in the form of Form 3.

## **Part 3 — Offices on councils**

### **10A. Terms used in this Part**

In this Part —

**“election”** means an election under Schedule 2.3;

**“records of the election”** includes —

- (a) each marked ballot paper returned to the CEO under regulation 11D(2);
- (b) each ballot paper marked by the CEO on behalf of a councillor under regulation 11E; and
- (c) each ballot paper endorsed “spoilt” under regulation 11C.

*[Regulation 10A inserted in Gazette 31 Mar 2005 p. 1044.]*

### **11. Proposals to change the method of filling the office of mayor or president (s. 2.12)**

A proposal by electors under section 2.12 to change the method of filling the office of mayor or president of a local government to the other method mentioned in section 2.11(1)(a) or (b) is to be in the form of Form 4.

### **11A. Election of mayor, president, deputy mayor or deputy president by council (Sch. 2.3)**

- (1) The CEO is to cause sufficient numbers of ballot papers to be printed for the purposes of the election.
- (2) The CEO is to cause the ballot papers to be printed so that the names of the candidates appear on the ballot paper —
  - (a) in alphabetical order; or
  - (b) in such order as is determined using a method selected by the CEO which is fair to all of the candidates.

**r. 11B**

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- (3) The ballot papers are to be in the form of Forms 10 and 11 of the *Local Government (Elections) Regulations 1997*, modified as is necessary for the purposes of the election.
- (4) A councillor is to cast his or her vote by marking the ballot paper by placing a tick in the box opposite the name of the candidate whom the councillor wishes to be elected.

*[Regulation 11A inserted in Gazette 31 Mar 2005 p. 1044-5.]*

**11B. Ballot papers to be authentic (Sch. 2.3 cl. 4 and 8)**

Before giving a person a ballot paper under this Part the CEO is to initial the back of it or make sure that it is authenticated in some other way.

*[Regulation 11B inserted in Gazette 31 Mar 2005 p. 1045.]*

**11C. Spoilt ballot papers (Sch. 2.3 cl. 4 and 8)**

If the CEO is satisfied that a ballot paper given to a councillor has been spoilt by accident or mistake, the CEO is to —

- (a) give the person a replacement ballot paper; and
- (b) endorse “spoilt” on the spoilt ballot paper.

*[Regulation 11C inserted in Gazette 31 Mar 2005 p. 1045.]*

**11D. Marking and dealing with the ballot paper (Sch. 2.3 cl. 4 and 8)**

- (1) Subject to regulation 11E, a councillor who receives a ballot paper under this Part is to mark the ballot paper in such a manner that it cannot be seen by anyone else.
- (2) The councillors are to return the marked ballot paper to the CEO.

*[Regulation 11D inserted in Gazette 31 Mar 2005 p. 1045.]*



**11E. Assistance to be given to councillors who cannot otherwise vote (Sch. 2.3 cl. 4 and 8)**

- (1) If a councillor who receives a ballot paper under this Part cannot vote without assistance because of impairment of sight or any other impairment or condition affecting the councillor's ability to read or to write, the councillor may request the CEO to mark on the ballot paper the vote that the councillor wishes to cast.
- (2) If a request is made under subregulation (1) the CEO, or another local government employee authorised for that purpose by the CEO, is to mark the ballot paper to record the vote that the councillor wishes to cast.

*[Regulation 11E inserted in Gazette 31 Mar 2005 p. 1045-6.]*

**11F. Declaration and notice of result of election — (Sch. 2.3 cl. 4 and 8)**

- (1) The person conducting the election is to declare the result of the election to the councillors at the meeting at which the election was held.
- (2) The declaration is to include —
  - (a) the names of the candidates; and
  - (b) the name and term of office of the candidate declared elected.
- (3) The declaration may include the number of votes received by each candidate.
- (4) The person conducting the election is also to give local public notice of the result of the election in the form of Form 19 of the *Local Government (Elections) Regulations 1997*, modified as is necessary for the purposes of this regulation.

*[Regulation 11F inserted in Gazette 31 Mar 2005 p. 1046.]*

**r. 11G**

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**11G.      Records of election to be retained (Sch. 2.3 cl. 4 and 8)**

- (1) As soon as practicable after the result of the election is declared the CEO is to —
  - (a) put the records of the election in one or more parcels;
  - (b) secure each parcel; and
  - (c) endorse each parcel by signing and dating it.
- (2) The CEO is to keep the parcels in safe custody and retain them for a period of at least 4 years after the declaration of the result of the election.
- (3) If, after the period mentioned in subregulation (2), the parcels are to be destroyed, the destruction is to be carried out by or under the supervision of the CEO in the presence of at least 2 employees.

*[Regulation 11G inserted in Gazette 31 Mar 2005 p. 1046.]*

**12.      Disqualification for membership; serious local government offences (s. 2.22)**

For the purposes of the definition of “serious local government offence” in section 2.22(3) —

- (a) the period referred to in paragraph (a) of the definition is —
  - (i) one year in the case of an offence against the Act; or
  - (ii) 3 months in the case of an offence against the former provisions;and
- (b) the amount referred to in paragraph (b) of the definition is —
  - (i) \$5 000 in the case of an offence against the Act; or
  - (ii) \$5 000 in the case of an offence against the former provisions.

*[Regulation 12 amended in Gazette 21 Aug 2007 p. 4187.]*

**13. Oaths, affirmations and declarations (s. 2.29, 2.42)**

(1) For the purposes of sections 2.29 and 2.42 —

*[(a), (b) deleted]*

(c) the form of declaration for a mayor, president, deputy mayor, deputy president or councillor is that in Form 7;

(d) the form of declaration for a commissioner is that in Form 8.

(2) A declaration required by section 2.29 to be made by a person elected as a mayor or president is to be made before —

(a) the immediate predecessor of the person in the office of mayor or president; or

(b) an authorised person.

(3) A declaration required by section 2.29 to be made by a person elected as a councillor, deputy mayor or deputy president is to be made before an authorised person.

(4) A declaration required by section 2.42 to be made by a person appointed as a commissioner is to be made before an authorised person.

(5) In this regulation —

**“authorised person”** means a person before whom a statutory declaration can be made under the *Oaths, Affidavits and Statutory Declarations Act 2005*.

*[Regulation 13 amended in Gazette 20 Jan 2006 p. 380-1.]*

## **Part 4 — Miscellaneous**

### **14. Transitional provision: Certain council members (s. 9.71)**

- (1) To avoid doubt it is declared that for the purposes of the application of Part 2 Division 5 of the Act and section 2.32 to —
- (a) the remainder of the term of office of a member of council referred to in clause 6 of Schedule 9.3; or
  - (b) the term of office of a member of council elected at an election referred to in clause 13 of Schedule 9.3,
- the member is to be regarded as being an elector of the district so long as he or she continues to —
- (c) reside in the district; or
  - (d) be, within the meaning of the former provisions, the owner or occupier of rateable property in the district.
- (2) In subregulation (1) —
- “former provisions”** means the *Local Government Act 1960* as in force immediately before the day on which the *Local Government Act 1995* came into operation.

*[15. Omitted under the Reprints Act 1984 s. 7(4)(f).]*

**Form 1. Proposal to create, change the boundaries of, or abolish a district [r. 8]**

### Proposal to create, change the boundaries of, or abolish a district<sup>1</sup>

Name: \_\_\_\_\_ Signature: \_\_\_\_\_  
Contact address: \_\_\_\_\_ Phone No.: \_\_\_\_\_  
Date: \_\_\_\_\_

- are at least 250 in number; or
- are at least 10% of the total number of affected electors.

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**[Form 1 continued]**

**List of affected electors** (form of each page of signatories)

We, the undersigned, propose that an order be made under section 2.1 of the *Local Government Act 1995* for the purposes summarized in item 2 of this proposal in relation to the district named in item 1.

| Full name of affected elector <sup>2</sup> | Address which entitles, or would entitle, you to vote in the elections of the local government of the district proposed to be created, affected or abolished | Signature of affected elector | Date |
|--|--|-------------------------------|------|
|  |  |                               |      |
|  |  |                               |      |

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<sup>2</sup> An “elector” is one of the following —

- a resident owner or occupier enrolled to vote at State elections;
- an owner of rateable property (e.g. an absentee land owner or an owner of business premises, vacant land or other non-residential property);
- an occupier of rateable property (e.g. tenant of business premises or other non-residential property).

An “affected elector” is —

- an elector whose eligibility as an elector comes from residence, or ownership or occupation of property, in the area directly affected by the proposal; or
- a person who would be an elector if the area directly affected by the proposal became, or became part of, a district.

**Form 2. Request for poll on a recommended amalgamation [r. 9]**

Local Government Act 1995

Local Government (Constitution) Regulations 1998

**Request for a poll on a recommended amalgamation<sup>1</sup>**

To: The Minister for Local Government.

1. The electors of the district of [name of district whose electors are making the request], whose names, details and signatures are set out in the attached list, request that the recommendation of the Local Government Advisory Board that the districts of [names of the 2 or more districts to be abolished or amalgamated] be abolished and amalgamated, be put to a poll of electors of the districts.
2. This request is served on behalf of the listed signatories by —
 

|                  |            |
|------------------|------------|
| Name:            | Signature: |
| Contact address: | Phone No.: |
| Date:            |            |

**List of electors** (form of each page of signatories)

We the undersigned, electors of the district of [name of district whose electors are making the request], request that the recommended abolition and amalgamation of the districts of [names of the 2 or more districts to be abolished or amalgamated] be put to a poll of electors of those districts under the *Local Government Act 1995*.

| Full name of elector <sup>2</sup> | Address which entitles you to vote in the elections of the local government of a district recommended for amalgamation | Signature of elector | Date |
|-----------------------------------|--|----------------------|------|
|                                   |  |                      |      |
|                                   |  |                      |      |

<sup>1</sup> Under clause 8 of Schedule 2.1 to the *Local Government Act 1995*, a request asking for a recommendation of the Local Government Advisory Board that districts be abolished and amalgamated to be put to a poll of electors of the districts can be made to the Minister for Local Government by —

- at least 250 of the electors of one of the districts; or
- at least 10% of the electors of one of the districts.

<sup>2</sup> An “elector” is one of the following —

- a resident owner or occupier enrolled to vote at State elections;
- an owner of rateable property (e.g. an absentee land owner or an owner of business premises, vacant land or other non-residential property);

- Extract from [www.slp.wa.gov.au](http://www.slp.wa.gov.au), see that website for further information



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**[Form 3 continued]****List of affected electors** (form of each page of signatories)

We the undersigned, submit that an order should be made under the *Local Government Act 1995* for the purpose set out in item 1 of this submission in relation to the [name of local government].

| Full name of affected elector <sup>3</sup> | Address which entitles you to vote in the elections of the local government to which this submission relates | Signature of affected elector | Date |
|--|--|-------------------------------|------|
|  |  |                               |      |
|  |  |                               |      |

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<sup>3</sup> An “elector” is one of the following —

- a resident owner or occupier enrolled to vote at State elections;
- an owner of rateable property (e.g. an absentee land owner or an owner of business premises, vacant land or other non-residential property);
- an occupier of rateable property (e.g. tenant of business premises or other non-residential property).

An “affected elector” is an elector whose eligibility as an elector comes from residence, or ownership or occupation of property, in the area directly affected by the submission.

**Form 4. Proposal to change the method of filling the office of mayor or president [r. 11]**

## Local Government Act 1995

## Local Government (Constitution) Regulations 1998

### Proposal to change the method of filling the office of mayor or president<sup>1</sup>

To: The <sup>2</sup>Mayor/President of [name of local government].

1. The method of filling the office of <sup>2</sup>mayor/president currently used by the [name of local government] is <sup>2</sup>election by electors of the district/election by the council from amongst the councillors.
2. The electors of [name of district], whose names, details and signatures are set out in the attached list, propose that the method of electing the mayor/president of the [name of local government] be changed to <sup>2</sup>election by the council from amongst the councillors/election by electors of the district.
3. A summary of the reasons for the proposed change is as follows:  
[Here set out summary]
4. This proposal is served on behalf of the listed signatories by —  
Name: Signature:  
Contact address: Phone No.:  
Date:

**[Form 4 continued]****List of electors** (form of each page of signatories)

We the undersigned, propose that the method of filling the office of <sup>2</sup>mayor/president of the [name of local government] be changed to <sup>2</sup>election by the council from amongst the councillors/election by electors of the district.

| Full name of elector <sup>3</sup> | Address which entitles you to vote in the elections of the local government to which this proposal relates | Signature of elector | Date |
|-----------------------------------|--|----------------------|------|
|                                   |  |                      |      |
|                                   |  |                      |      |

<sup>1</sup> Under section 2.11(1) of the *Local Government Act 1995*, the method of filling the office of mayor or president of a local government is either —

- election by the electors of the district; or
- election by the council from amongst the councillors.

Under section 2.12 of the Act, a proposal to change from one method to the other method can be made to the local government by electors of the district who —

- are at least 250 in number; or
- are at least 10% of the total number of electors of the district.

<sup>2</sup> Delete the one that does not apply.

<sup>3</sup> An elector is one of the following —

- a resident owner or occupier enrolled to vote at State elections;
- an owner of rateable property (e.g. an absentee land owner or an owner of business premises, vacant land or other non-residential property);
- an occupier of rateable property (e.g. tenant of business premises or other non-residential property).

*[Forms 5 and 6 deleted in Gazette 20 Jan 2006 p. 381.]*

**Form 7.      Declaration by elected member of council**

**[r. 13(1)(c)]**

Local Government Act 1995

Local Government (Constitution) Regulations 1998

**Declaration by elected member**

I, .....,  
of .....  
having been elected to the office of <sup>1</sup>mayor/deputy mayor/president/deputy  
president/councillor of the <sup>2</sup> .....  
declare that I take the office upon myself and will duly, faithfully, honestly, and with  
integrity, fulfil the duties of the office for the people in the district according to the best  
of my judgment and ability, and will observe the code of conduct adopted by the <sup>2</sup> .....  
..... under section 5.103 of the *Local Government Act 1995*.

Declared at ..... on .....

by .....  
Before me: .....

---

<sup>1</sup>      Delete those that do not apply.

<sup>2</sup>      Insert the name of the local government.

---

**Form 8.      Declaration by commissioner      [r. 13(1)(d)]**

Local Government Act 1995

Local Government (Constitution) Regulations 1998

**Declaration by commissioner**

I, .....,  
of .....,  
having been appointed to the office of commissioner  
of the <sup>1</sup> .....  
declare that I take the office upon myself and will duly, faithfully, honestly, and with  
integrity, fulfil the duties of the office according to the best of my judgment and ability.

Declared at ..... on .....

by .....

Before me: .....

---

<sup>1</sup>      Insert the name of the local government

## Notes

- <sup>1</sup> This is a compilation of the *Local Government (Constitution) Regulations 1998* and includes the amendments made by the other written laws referred to in the following table <sup>1a</sup>. The table also contains information about any reprint.

### Compilation table

| <i>Citation</i>   | <i>Gazettal</i>           | <i>Commencement</i>  |
|---|---------------------------|--|
| <i>Local Government (Constitution) Regulations 1998</i>   | 26 Jun 1998<br>p. 3449-74 | 26 Jun 1998  |
| <i>Local Government (Constitution) Amendment Regulations 2005</i>   | 31 Mar 2005<br>p. 1044-6  | 7 May 2005 (see r. 2)  |
| <i>Local Government (Constitution) Amendment Regulations 2006</i>   | 20 Jan 2006<br>p. 380-1   | 20 Jan 2006  |
| <b>Reprint 1: The <i>Local Government (Constitution) Regulations 1998</i> as at 19 Jan 2007</b><br>(includes amendments listed above) |                           |  |
| <i>Local Government (Constitution) Amendment Regulations 2007</i> r. 1-3 and 10   | 21 Aug 2007<br>p. 4183-8  | r. 1 and 2: 21 Aug 2007 (see r. 2(a));<br>r. 3 and 10: 22 Aug 2007 (see r. 2(b)) |

- <sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

### Provisions that have not come into operation

| <i>Citation</i>   | <i>Gazettal</i>          | <i>Commencement</i>  |
|---|--------------------------|--|
| <i>Local Government (Constitution) Amendment Regulations 2007</i> r. 4-9 and 11-13 <sup>3</sup> | 21 Aug 2007<br>p. 4183-8 | Regulations other than r. 12: 6 Sep 2007 (see r. 2(d) and <i>Gazette</i> 3 Aug 2007 p. 3989);<br>r. 12: 21 Oct 2007 (see r. 2(c) and <i>Gazette</i> 21 Aug 2007 p. 4173) |

- <sup>2</sup> Repealed by the *Planning and Development (Consequential and Transitional Provisions) Act 2005*.

<sup>3</sup> On the date as at which this compilation was prepared, the *Local Government (Constitution) Amendment Regulations 2007* r. 4-9 and 11-13 had not come into operation. They read as follows:

“

**4. Regulation 10A amended**

- (1) Regulation 10A is amended in the definition of “election” by inserting after “Schedule 2.3” —  
“ to the Act ”.
- (2) Regulation 10A is amended in the definition of “records of the election” as follows:
  - (a) in paragraph (b) by deleting “councillor” and inserting instead —  
“ council member ”;
  - (b) after paragraph (c) by deleting the full stop and inserting —

“

- “ ; and
  - (d) if 3 or more candidates were named on the ballot paper, a record of the manual count that shows how the number of votes obtained or received by each candidate was ascertained or, if an electronic counting system was used for the election —
    - (i) a paper copy of the electronic record of preferences indicated on ballot papers that was used as data by the system to ascertain the number of votes obtained or received by each candidate; and
    - (ii) a paper copy of the electronic count that shows how the number of votes obtained or received by each candidate was ascertained.

”;

- (c) after paragraph (a) by inserting —  
“ and ”.

**5. Regulation 11A amended**

- (1) Regulation 11A(3) is amended by deleting “Forms 10 and 11” and inserting instead —  
“ Form 10 ”.
- (2) Regulation 11A(4) is repealed and the following subregulations are inserted instead —

“

- (4) A council member is to cast his or her vote by marking the ballot paper as follows —
- (a) if only 2 candidates are named on the ballot paper — by writing the numeral “1” in the box opposite the name of the candidate whom the council member wishes to be elected;
  - (b) if 3 or more candidates are named on the ballot paper — by writing the numeral “1” in the box opposite the name of the candidate for whom the council member votes as his or her first preference, the numeral “2” in the box opposite the name of the candidate for whom the council member votes as his or her second preference, and so on, until the council member has numbered every box to indicate the order of his or her preference for all the candidates.
- (5) If preferences are indicated for all but one of the candidates, that candidate is taken to rank lowest in the order of the council member’s preference for the candidates.

”.

**6. Regulation 11EA inserted**

After regulation 11E the following regulation is inserted —

“

**11EA. Counting of votes in accordance with Schedule 4.1 (Sch. 2.3 cl. 4, 5, 8 and 9)**

Regulations made under Schedule 4.1 to the Act regarding the drawing of lots apply in respect of the election in so far as they are capable of being so applied.

”.

**7. Regulation 11F amended**

- (1) After regulation 11F(2)(a) the following is inserted —

“

- (aa) if 3 or more candidates were named on the ballot paper, the order of election or exclusion of each candidate; and

”.

- (2) Regulation 11F(3) is repealed and the following subregulation is inserted instead —



“

- (3) The declaration may include —
- (a) if only 2 candidates were named on the ballot paper, the number of votes received by each candidate;
  - (b) if 3 or more candidates were named on the ballot paper, any of the following —
    - (i) the number of first preference votes received by each candidate;
    - (ii) the votes obtained or received by each candidate at election or exclusion.

”.

**8. Regulation 11FA inserted**

After regulation 11F the following regulation is inserted —

“

**11FA. Report to Minister (Sch. 2.3 cl. 4 and 8)**

- (1) Within 14 days after the declaration of the result of the election, the person conducting the election is to provide the Minister with a report as to the result of the election.
- (2) The report is to be in the form of Form 20 of the *Local Government (Elections) Regulations 1997*, modified as is necessary for the purposes of this regulation.

”.

**9. Regulation 11H inserted**

After regulation 11G the following regulation is inserted —

“

**11H. Notice of effect of Court’s decision (Sch. 2.3 cl. 12)**

If a Court of Disputed Returns makes a declaration under regulation 85(1)(a), (b) or (c) of the *Local Government (Elections) Regulations 1997*, as applied under clause 12(2) of Schedule 2.3 to the Act, the CEO is, as soon as practicable —

- (a) to give local public notice in a form that conveys the effect of the declaration; and
- (b) to provide to the Minister a report in a form that conveys the effect of the declaration.

”.

**11. Regulation 14 amended**

Regulation 14(1)(a) and (b) are amended by inserting after  
“Schedule 9.3” —

“ to the Act ”.

**12. Schedule 1 amended**

Schedule 1 is amended by deleting Forms 7 and 8 and inserting the  
following forms instead —

“

**Form 7. Declaration by elected member of council [r. 13(1)(c)]**

Local Government Act 1995

Local Government (Constitution) Regulations 1998

**Declaration by elected member**

I, .....  
of <sup>1</sup> .....

having been elected to the office of <sup>2</sup>mayor/deputy mayor/president/deputy  
president/councillor of the <sup>3</sup> .....

declare that I take the office upon myself and will duly, faithfully, honestly,  
and with integrity, fulfil the duties of the office for the people in the district  
according to the best of my judgment and ability, and will observe the *Local  
Government (Rules of Conduct) Regulations 2007*.

Declared at ..... on .....

by .....

Before me: .....

---

<sup>1</sup> Insert your residential address.

<sup>2</sup> Delete those that do not apply.

<sup>3</sup> Insert the name of the local government.

**Form 8. Declaration by commissioner [r. 13(1)(d)]**

Local Government Act 1995

Local Government (Constitution) Regulations 1998

**Declaration by commissioner**

I, .....

of <sup>1</sup> .....

having been appointed to the office of commissioner  
of the<sup>2</sup> .....  
declare that I take the office upon myself and will duly, faithfully, honestly,  
and with integrity, fulfil the duties of the office according to the best of my  
judgment and ability.

Declared at ..... on .....  
by .....  
Before me: .....

<sup>1</sup> Insert your residential address.

<sup>2</sup> Insert the name of the local government.

”.

**13. Miscellaneous amendments**

Each provision listed in column 1 of the Table to this regulation is amended by deleting the text set out in column 2, and inserting instead the text set out in column 3, opposite that provision.

| <b>Table</b>         |                 |                  |
|----------------------|-----------------|------------------|
| <b>Column 1</b>      | <b>Column 2</b> | <b>Column 3</b>  |
| Provision            | Delete          | Insert           |
| r. 11C               | councillor      | council member   |
| r. 11D(1)            | councillor      | council member   |
| r. 11D(2)            | councillors     | council members  |
| r. 11E(1) (3 places) | councillor      | council member   |
| r. 11E(1)            | councillor's    | council member's |
| r. 11E(2)            | councillor      | council member   |
| r. 11F(1)            | councillors     | council members  |

Note: The heading to regulation 11E is to be altered by deleting “councillors” and inserting instead “**council members**”.

”.