



New South Wales

Local Land Services Amendment (Elections) Regulation 2019

under the

Local Land Services Act 2013

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Local Land Services Act 2013*.

ADAM MARSHALL, MP
Minister for Agriculture and Western New South Wales

Explanatory note

The object of this Regulation is to amend the *Local Land Services Regulation 2014* as follows—

- (a) to update terminology,
- (b) to preclude a person from eligibility for election or appointment as a local board member in certain circumstances,
- (c) to update Schedule 1 in relation to local board elections to change the voting process and remove the existing requirement of enrolment before voting.

This Regulation is made under the *Local Land Services Act 2013*, including sections 27 and 206 (the general regulation-making power).

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1 Name of Regulation

This Regulation is the *Local Land Services Amendment (Elections) Regulation 2019*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

Schedule 1 Amendment of Local Land Services Regulation 2014

[1] Clause 29 Annual returns

Omit clause 29(3)(1). Insert instead—

- (1) in relation to an annual return lodged by a person referred to in clause 28(1)(a)—the landholding reference number shown on the rate notice for the land.

[2] Clause 91

Omit the clause. Insert instead—

91 Eligibility for election as a member of a local board—section 27(5)

A person is eligible for election as a member of a local board for a region if the person's principal place of residence is in the region.

[3] Clause 94

Omit the clause. Insert instead—

94 Ineligibility for election or appointment as a member of a local board— section 27(5)

A person is not eligible for election or appointment as a member of a local board for a region if—

- (a) within the previous 15 years, the person has been bankrupt, applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounded with the person's creditors or made an assignment of the person's remuneration for their benefit, or
- (b) the person has been convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or has been convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

[4] Schedule 1 Elections for members of local boards

Omit Parts 1 and 2. Insert instead—

Part 1 Preliminary

1 Definitions

In this Schedule—

candidate means a candidate for election as a member of a local board.

close of ballot date means the date and time fixed by the returning officer for the close of ballot for an election.

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

election means an election for a member or members of a local board in a region.

returning officer means the person appointed by Local Land Services to be the returning officer for an election.

2 Returning officer

- (1) Local Land Services is to appoint a person as a returning officer for each election under this Schedule.
- (2) A person may be appointed as a returning officer for an election for more than one region.
- (3) The returning officer is to conduct the election for which the returning officer was appointed.
- (4) For the purposes of conducting an election, the returning officer may determine any matter not provided for by the Act or this Regulation.
- (5) The returning officer may delegate any of the returning officer's functions under this Schedule (other than this power of delegation) to any person other than a candidate in an election.

3 Roll

- (1) The returning officer must prepare a roll for each election for a region.
- (2) The roll is to contain the full name and postal address of the occupier of each holding in the region that consists wholly or partly of rateable land and particulars identifying the holding.
- (3) If an occupier has consented to receiving notices and other documents under this Schedule by email, the roll is also to contain the email address of the occupier.
- (4) The returning officer must ensure that a copy of the roll is available for inspection for a period of 42 days before the close of ballot date.
- (5) A person may inspect the person's entry on the roll.
- (6) An inspection of the roll is to be free of charge.
- (7) A person must notify the returning officer of any administrative errors relating to the person's entry on the roll at least 14 days before the close of ballot date.

Part 2 Voting entitlements

4 Election for members

The members of a local board for a region are to be elected by the persons entitled to vote in an election for the region.

5 Voluntary voting

Voting at an election is voluntary.

6 Only individuals can vote

A person may only vote in an election for a region if the person is an individual who is 18 or more years old.

7 Occupier who may vote

The occupier of a holding that consists wholly or partly of rateable land may vote in an election in the capacity of occupier of that holding, subject to clauses 6 and 8.

8 Authorised representative

- (1) If an occupier is not an individual, the occupier may nominate an individual to vote as the occupier's authorised representative.
- (2) An individual may vote more than once in the capacity of an authorised representative of occupiers of holdings.
- (3) An individual may be appointed as the authorised representative of the occupier of a holding whether or not the individual is an occupier of that or another holding.
- (4) The individual must confirm that the individual is the authorised representative of the occupier by completing the declaration form referred to in clause 23.

9 Two or more occupiers

If there are 2 or more occupiers of a holding, only one individual may vote as the authorised representative of all of the occupiers of the holding.

10 Multiple holdings

- (1) If an occupier, or a group of 2 or more occupiers, occupies 2 or more holdings, that occupier or group or an individual authorised by them, may only cast one vote in the election regardless of the number of holdings concerned.
- (2) Subclause (1) does not prevent an individual from also voting on one or more occasions as the authorised representative of occupiers of holdings of which the individual is not an occupier.

[5] Schedule 1, Part 3, Divisions 1–5

Omit Divisions 1–6 of Part 3. Insert instead—

Division 1 Elections

11 General election

A general election of elected members of local boards is to be held whenever the terms of office of the elected members expires.

12 Delayed election

- (1) If the Minister is of the opinion that it would be impractical or inconvenient to hold a general election in time for the elected members to take office when required by clause 11, the Minister may, by order published in the Gazette, appoint a later day by which a general election must be held.
- (2) If a later day is appointed, the retiring elected members continue in office until that day, and if an elected member resigns in the meantime, the office is vacant until that day.

13 Notice of election

- (1) As soon as practicable after it has been determined in accordance with the Act or this Regulation that an election is required to be held, notice of that fact is to be given to the returning officer by Local Land Services.
- (2) The returning officer must give notice that an election is to be held by—
 - (a) causing notice to be published on a website maintained by Local Land Services in a manner approved in writing by Local Land Services

- having regard to the object of bringing notices of that kind to the attention of members of the public in the relevant region, and
- (b) displaying a notice in a prominent place in the office of the local board concerned or on a community notice board at a public place within the region.
- (3) A notice under subclause (2) must—
- (a) state that the election is to be held and specify the region involved, and
 - (b) state the number of members to be elected, and
 - (c) call for nominations of candidates, and
 - (d) state the close of nominations date, and
 - (e) state where the roll may be inspected, and
 - (f) state the close of ballot date, and
 - (g) state how and when a voting pack for the election may be obtained.
- (4) The returning officer may also, in addition, give notice of an election in any other manner the returning officer thinks fit.

Division 2 Candidates

14 Eligibility

A person eligible for election as a member of a local board under the Act or this Regulation is eligible for nomination as a candidate for an election.

15 Nomination

- (1) A person entitled to vote in an election for a region may nominate a candidate (including himself or herself) for the election.
- (2) A nomination must be in the manner and form approved by the returning officer and lodged with the returning officer before the close of nominations date.
- (3) The nomination must contain the following information—
 - (a) the candidate's name,
 - (b) that the candidate is an individual who is 18 or more years old,
 - (c) the candidate's residential address,
 - (d) a statement signed by the candidate that the candidate consents to—
 - (i) the nomination, and
 - (ii) the information provided being used by the returning officer for the purposes of compiling a candidate information sheet,
 - (e) any other relevant information required by the returning officer.
- (4) Each candidate must be nominated by a separate nomination.

16 Assessment of nomination

- (1) On receipt of a nomination, the returning officer must sign it with the date and time of receipt.
- (2) The returning officer must notify candidates whether the nomination has been accepted or refused before the first voting pack for an election is provided under clause 22.

17 Withdrawal of nomination

- (1) A candidate who has been nominated for an election may withdraw the nomination at any time before the close of nominations date.
- (2) A withdrawal must be in writing, signed by the candidate and lodged with the returning officer.

18 Candidate information sheet

- (1) The returning officer must compile a candidate information sheet consisting of information about each candidate.
- (2) The candidate information sheet is to be based on information provided by the candidate in the candidate's nomination.
- (3) In compiling the candidate information sheet, the returning officer may omit (or, with the consent of the candidate, correct) so much of the information submitted by the candidate—
 - (a) as the returning officer considers to be false or misleading, or
 - (b) as the returning officer considers to be inappropriate for inclusion in the candidate information sheet.
- (4) The names of the candidates must be listed on the candidate information sheet in the same order as they are listed on the ballot paper for the election.

19 Death of candidate

If a candidate dies after the close of nominations date and before the close of ballot date for an election—

- (a) the returning officer is to cause notice of the death to be published on a website maintained by Local Land Services in a manner approved in writing by Local Land Services having regard to the object of bringing notices of that kind to the attention of members of the public in the relevant region, and
- (b) if there are no other eligible candidates, all proceedings after the returning officer was notified that an election was required to be held are of no effect and must be undertaken again.

20 Uncontested elections

If the number of persons who have been duly nominated as candidates by the close of nominations date, and whose nominations have been accepted, does not exceed the number of persons to be elected, each of those persons is, without a ballot being held, taken to be elected.

21 Contested elections

- (1) If the number of persons who have been duly nominated as candidates by the close of nominations date, and whose nominations have been accepted, exceeds the number of persons to be elected, a ballot must be held.
- (2) An election is to be conducted by—
 - (a) notifying occupiers on the roll of how and when a voting pack for the election may be obtained, and
 - (b) by distributing voting packs to occupiers on the roll who request a voting pack and requiring those persons to vote by prepaid envelope or electronically.

Division 3 Voting pack

22 Voting pack

- (1) For each election, the returning officer must give notice to each occupier on the roll of how and when a voting pack for the election may be obtained.
- (2) Notice is taken to be given if a notice is provided under clause 13 containing the information specified in clause 13(3)(g) but may also be given at an earlier time.
- (3) The returning officer is to ensure that an occupier requesting a voting pack is required to indicate whether the occupier wishes to be provided with a voting pack by post or electronically.
- (4) The returning officer is to provide a voting pack to an occupier if requested to do so.
- (5) If an occupier on the roll elects to obtain a voting pack by post, the returning officer must include the following in the voting pack—
 - (a) a declaration form,
 - (b) a ballot paper,
 - (c) a candidate information sheet,
 - (d) instructions for completing the declaration form and ballot paper by prepaid envelope,
 - (e) instructions for completing the declaration form and ballot paper electronically,
 - (f) one envelope marked “Ballot Paper”,
 - (g) one prepaid envelope addressed to the returning officer.
- (6) If an occupier on the roll elects to obtain a voting pack electronically or is provided with an electronic voting pack under subclause (7), the returning officer must include the following in the voting pack—
 - (a) a declaration form,
 - (b) a ballot paper,
 - (c) a candidate information sheet,
 - (d) instructions for completing the declaration form and ballot paper electronically.
- (7) The returning officer may provide an occupier on the roll with an electronic voting pack instead of giving notice under subclause (1) if the occupier has consented to receiving notices and other documents by email.

23 Declaration form

The declaration form must require the person voting to state the following information—

- (a) the person’s name,
- (b) that the person is an individual who is 18 or more years old,
- (c) that the person is an occupier, or the authorised representative of an occupier, of a holding in the region,
- (d) that the holding consists wholly or partly of rateable land,
- (e) that the person has not yet voted in the election for the region in the person’s capacity as an occupier.

24 Ballot paper

- (1) The ballot paper must contain the names of all candidates for the election arranged in an order determined by the returning officer by drawing lots.
- (2) The ballot paper must contain a box opposite and to the left of the name of each candidate.

25 Instructions for completing prepaid envelope

The instructions for completing the declaration form and ballot paper by prepaid envelope must include the following information—

- (a) the close of ballot date,
- (b) instructions on how to cast a valid vote,
- (c) that in order to vote in the election the person must—
 - (i) complete the declaration form, and
 - (ii) mark the ballot paper next to the name of the person's preferred candidates (not being more than the number of persons to be elected in the election), and
 - (iii) enclose and seal the ballot paper in the envelope marked "Ballot Paper", and
 - (iv) insert the declaration form and envelope marked "Ballot Paper" into the prepaid envelope addressed to the returning officer and seal it, and
 - (v) send the prepaid envelope by post, or deliver it to the returning officer, so that the returning officer receives it no later than the close of ballot date,
- (d) any other information that the returning officer considers appropriate to include.

26 Prepaid envelopes

The returning officer must ensure that all prepaid envelopes received before the close of ballot date are stored securely until the counting of votes begins.

27 Instructions for completing electronically

The instructions for completing the declaration form and ballot paper electronically must include the following information—

- (a) the date and time for the close of ballot date,
- (b) the internet address of the voting website,
- (c) the name of the person as it appears on the roll and the password required to enable the person to access the voting website,
- (d) instructions on how to cast a valid vote,
- (e) that in order to vote in the election the person must—
 - (i) complete and submit the electronic declaration form, and
 - (ii) mark the electronic ballot paper next to the name of the person's preferred candidates (not being more than the number of persons to be elected in the election) and submit the electronic ballot paper,
- (f) any other information that the returning officer considers appropriate to include.

28 Voting website

The voting website must provide a warning message to a person if there are errors on the person's declaration form or ballot paper.

29 Computer and internet facilities

- (1) The returning officer is to ensure that computer and internet facilities are made available free of charge at the office of the local board in order to provide each person with an opportunity to vote electronically.
- (2) The returning officer may make additional arrangements to ensure that each person has an opportunity to vote electronically.

Division 4 Election results

30 Ascertaining result

The result of a ballot for an election is to be ascertained by the returning officer as soon as practicable after the close of ballot date.

31 Scrutineers

- (1) Each candidate may nominate one person to be a scrutineer at the election.
- (2) At least one scrutineer, whether nominated by a candidate or otherwise, is to be present during the initial scrutiny and count for the election.
- (3) A candidate may not act as a scrutineer.

32 Initial scrutiny—prepaid envelopes

- (1) On the close of ballot date for an election, the returning officer must, in the presence of any scrutineers who are present—
 - (a) examine the contents of the prepaid envelopes, and
 - (b) reject as informal those that, in the opinion of the returning officer, do not comply with the requirements of this Schedule, and
 - (c) initial the backs of the remaining ballot papers, and
 - (d) proceed to count the remaining ballot papers.
- (2) A ballot paper of a person at an election is informal if—
 - (a) the person has failed to record a vote in the manner directed on it, or
 - (b) it has not been initialled on the back by the returning officer.
- (3) Despite subclause (2), if, in the opinion of the returning officer, a person's intention is clearly indicated on a ballot paper, the ballot paper is not informal merely because—
 - (a) the ballot paper contains an unnecessary mark, or
 - (b) the number of candidates the person has recorded a vote for is less than the number to be elected in the election.

33 Initial scrutiny—electronic votes

- (1) On the close of ballot date for an election, the returning officer must, in the presence of any scrutineers who are present, review all electronic declaration forms and ballot papers for the electronic ballot.
- (2) An electronic vote is informal if the person has not indicated a clear preference for at least one candidate or if the vote does not, in the opinion of the returning officer, comply with the requirements of this Schedule.

- (3) Each informal electronic vote is to be recorded by the voting website as an informal vote and the voting website is to count the formal electronic votes.
- (4) An electronic vote is not informal merely because the number of candidates the person has recorded a vote for is less than the number to be elected in the election.

34 Count

- (1) After the initial scrutiny at an election, the returning officer must—
 - (a) count the prepaid envelope votes and electronic votes recorded for each candidate, and
 - (b) count the informal votes, and
 - (c) ascertain the results of the count, and
 - (d) inform the persons present of the result of the count.
- (2) The candidate or candidates with the most votes is or are taken to be elected.
- (3) If 2 candidates receive an equal number of votes, the candidate taken to be elected is the candidate whose name is drawn from a lot containing the name of each of the 2 candidates.

35 More than one ballot paper

- (1) If the returning officer receives more than one ballot paper from an occupier, or more than one ballot paper in respect of a holding, the returning officer must compare the ballot papers.
- (2) If the ballot papers are—
 - (a) consistent—the returning officer must count one ballot paper only, or
 - (b) inconsistent—the returning officer must reject the ballot papers.

36 Recount

- (1) A candidate who is present when the returning officer declares the result of the count at an election may request a recount of the ballot papers.
- (2) If a request is made by a candidate who is present at the declaration, the returning officer must have the papers scrutinised and counted again and is to inform the persons present of the results of the recount.

37 Declaration of result

- (1) As soon as practicable after counting the votes in an election, the returning officer is to notify Local Land Services, in writing, of the candidate or candidates elected.
- (2) The returning officer is to cause notice of the candidate or candidates elected in the election to be published in one or both of the following ways—
 - (a) on the Local Land Services website,
 - (b) in a manner approved in writing by Local Land Services having regard to the object of bringing notices of that kind to the attention of members of the public in the relevant region.

Division 5 Disputes

38 Disputing elections

- (1) A person who is dissatisfied with the following may dispute the validity of an election by an application made to the Land and Environment Court, and not otherwise—
 - (a) the conduct of the election,
 - (b) any decision of a returning officer under this Schedule (except a decision relating to clause 3 (Roll) or clause 35 (More than one ballot paper) of this Schedule).
- (2) An application to the Land and Environment Court under subclause (1) must set out the facts relied on to invalidate the election.
- (3) Any person may make an application to the Court under this clause within 28 days after the returning officer has publicly declared the result of the election that is the subject of the application.

39 Powers of Land and Environment Court

In determining an application under clause 38, the Land and Environment Court has the same powers as are conferred by section 225 of the *Electoral Act 2017* on the Court of Disputed Returns.

39A Right of returning officer to be represented

The returning officer is entitled to be represented at the hearing of an application under clause 38.

39B Procedure

- (1) The procedure of the Land and Environment Court on an application under clause 38 is to be determined by rules of court, or in the absence of rules of court, by the Court or a judge of the Court.
- (2) The Land and Environment Court is not bound by the rules or practice of evidence and can inform itself on any matter in such manner as it considers appropriate.

[6] Schedule 1, Part 3, Division 7

Omit the heading to the Division. Insert instead “**Division 6 Offences**”.

[7] Schedule 1, clause 42

Omit “an elector” from clause 42(1)(a). Insert instead “a person”.

[8] Schedule 1, clause 43

Omit “elector”. Insert instead “person”.

[9] Schedule 1, clause 44

Omit “an elector” from clause 44(1). Insert instead “a person”.

[10] Schedule 1, clause 45

Omit “an elector at such an election, do any of the things set out in section 147 of the *Parliamentary Electorates and Elections Act 1912*”.

Insert instead “or a person at an election, do any of the things set out in section 209 of the *Electoral Act 2017*”.

[11] Schedule 1, clause 46

Omit the clause.

[12] Schedule 1, clause 47

Omit “or an elector at such an election, do any of the things set out in section 151 of the *Parliamentary Electorates and Elections Act 1912*”.

Insert instead “or a person at an election, do any of the things set out in section 210 of the *Electoral Act 2017*”.

[13] Schedule 1, Part 3, Division 8

Omit the Division.

[14] Schedule 1, Part 4

Insert after Part 3—

Part 4 Miscellaneous

48 Decisions of returning officer final

If the returning officer is permitted or required by this Regulation to make a decision on a matter relating to the taking of a ballot in any election, the decision of the returning officer on that matter is final.

49 Election materials

- (1) After the results of an election are declared, the returning officer is to—
 - (a) parcel the marked and unmarked ballot papers, the roll and other papers or envelopes used in the election, and
 - (b) seal, endorse and sign each parcel and allow any scrutineers present to watch the returning officer carry out those actions and countersign the parcel, and
 - (c) keep the parcels, and any electronic files, safe and secure for 12 months after the election.
- (2) If a court so directs, or any legislation so requires or permits, the returning officer is to allow any person to inspect any of the election materials.

[15] Schedule 2 Penalty notice offences

Omit the matter relating to clause 46 from Part 3.