

1991—No. 567

NURSES ACT 1991—REGULATION

(Nurses (First Election) Regulation 1991)

NEW SOUTH WALES



[Published in Gazette No. 153 of 1 November 1991]

HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Nurses Act 1991, has been pleased to make the Regulation set forth hereunder.

JOHN HANNAFORD
Minister for Health and Community Services.

PART 1—PRELIMINARY

Citation

1. This Regulation may be cited as the Nurses (First Election) Regulation 1991.

Commencement

2. This Regulation commences on 1 November 1991.

Application

3. This Regulation applies only to the first election of members of the Board under the Nurses Act 1991.

Definitions

4. (1) In this Regulation:

“**absolute majority**” means, in relation to votes, a number greater than one half of the total;

“**by lot**” means in accordance with clause 15;

“**class**” means the class constituted by registered nurses or constituted compositely by enrolled nurses and enrolled nurses (mothercraft), as the case requires;

“**continuing candidate**” means, at any moment during the process of determining an election, a candidate not already excluded from that process;

“**next available preference**” means a preference that has not previously been counted, either as a primary vote or in the process of the distribution of preferences;

“**primary vote**” is defined in clause 18;

“**the Act**” means the Nurses Act 1991.

(2) For the purposes of this Regulation:

- (a) a ballot-paper on which the same preference (other than a first preference) has been recorded for more than one candidate is to be treated as if those preferences and any subsequent preferences had not been recorded on the ballot-paper; or
- (b) a ballot-paper on which there is a break in the order of preferences recorded on it is to be treated as if any subsequent preference had not been recorded on the ballot-paper.

PART 2—ELECTION OF MEMBERS OF THE BOARD: GENERAL

Board elections

5. An election of 4 members of the Board for the purposes of section 9 (2) (a) and (b) of the Act is to be carried out on a date to be determined by the Minister.

Returning officer

6. The Electoral Commissioner of New South Wales, or a person employed in the office of, and nominated by, the Electoral Commissioner, is to be the returning officer at an election of members of the Board.

Notification of election

7. (1) The returning officer, as soon as practicable after being notified in writing by the Minister of the date on which an election is required to be held, is to publish in the Gazette and in at least one daily newspaper published or circulating in New South Wales a notice:

- (a) specifying the polling day for the election; and

- (b) inviting nominations from nurses to fill the vacancies for elected members of the Board; and
- (c) fixing a time and a date for the close of nominations for the election, being a date at least 30 days prior to the polling day for the election.

(2) The notice is to be published in accordance with this clause at least 60 days prior to the polling day specified in the notice.

(3) The returning officer may postpone the polling day or date for the close of nominations (or both) by publishing a new notice in accordance with this clause, but only if the new notice:

- (a) is published at least 60 days before the polling day specified in the new notice, and any new date for the close of nominations falls at least 30 days before that polling day; or
- (b) specifies a day and a date which have both been approved by the Minister.

Nominations

8. (1) Nomination of a candidate must be made in writing to the returning officer, in a form approved by the Registrar, and must contain the following:

- (a) the full name of the candidate;
- (b) the residential address of the candidate;
- (c) the full names, residential addresses and signatures of the nominators;
- (d) an endorsement by the candidate of his or her consent to the nomination.

(2) Nomination of a registered nurse candidate must be of a registered nurse and by at least 3 other registered nurses.

(3) Nomination of an enrolled nurse candidate must be of an enrolled nurse and by at least 3 other nurses each of whom is enrolled on List "A" of the Roll or List "B".

(4) Nomination of an enrolled nurse (mothercraft) candidate must be of an enrolled nurse (mothercraft) and by at least 3 other nurses enrolled on List "A" of the Roll or List "B".

(5) Nominators for the purposes of subclause (3) or (4) need not be enrolled on the same List.

(6) A candidate may withdraw his or her nomination by notification in writing delivered to the returning officer at any time until the close of nominations for the election.

Candidate information sheets

9. (1) A candidate may, at any time before the close of nominations for the election, submit personal information to the returning officer in the form approved by the Registrar and verified by statutory declaration.

(2) After the close of nominations for the election, the returning officer is to draw up a candidate information sheet, consisting of the information submitted under subclause (1) by all the candidates.

(3) Where the returning officer considers that any such information is:

(a) misleading in any material particular; or

(b) of a length greater than that permitted by the approved form, the returning officer may, in drawing up a candidate information sheet, omit or rectify that particular, or reduce the length of the information.

(4) Information concerning candidates is to appear on a candidate information sheet in the same order in which the candidates are listed on the relevant ballot-paper drawn up under clause 11.

Procedure after close of nominations

10. (1) If, after the close of nominations, there is not a greater number of candidates than is required for election in a class, the returning officer is to declare those candidates or that candidate duly elected in that class.

(2) If, after the close of nominations, the number of candidates is greater than the number required for election in a class:

(a) a poll is to be taken among the nurses of the class; and

(b) the returning officer is to notify the Registrar of that fact; and

(c) in the poll, a voter is to vote for at least the number of candidates to be elected, and may vote for as many more candidates as the voter wishes.

(3) Not later than 7 days after being so notified by the returning officer, the Registrar is to prepare, certify and deliver to the returning officer:

(a) a roll containing the full name and address of every nurse of the class in relation to which the poll is to be taken; and

(b) if required by the returning officer, an envelope label (or an envelope) for every nurse of that class on that roll, being a label (or envelope) on which is shown the nurse's full name and address.

(4) A reference in this clause to the full name of a nurse is a reference to the name appearing on the Register or Roll (as the case may be) at the date of the close of nominations.

(5) A reference in this clause to the address of a nurse is a reference to the address appearing at the date of the close of nominations on the appropriate record of addresses kept by the Registrar.

(6) If, after the close of nominations for an election and before the polling day, any candidate dies, the returning officer is to invite fresh nominations and, if it is necessary, to fix another day for the poll by a new notice in accordance with clause 7 (3).

Ballot-papers

11. (1) If a poll is to be taken, the returning officer must:

- (a) hold a ballot, in the manner prescribed for the purposes of section 82A of the Parliamentary Electorates and Elections Act 1912, to determine the order in which the candidates' names are to be entered on the ballot-papers;
- (b) draw up ballot-papers in the manner prescribed by section 83 (a)–(d) of the Parliamentary Electorates and Elections Act 1912 (a reference in that section to the Electoral Commissioner being taken as a reference here to the returning officer); and
- (c) have the ballot-papers printed as well as copies of the candidate information sheet drawn up under clause 9.

(2) The returning officer must, not later than 20 days prior to the date fixed for a poll in a class, post to every nurse in that class and on the roll delivered under clause 10, at the nurse's address on that roll:

- (a) a ballot-paper printed in accordance with this clause and initialled by the returning officer; and
- (b) an envelope addressed to the returning officer; and
- (c) a copy of the candidate information sheet.

(3) The envelope must contain a space on its outside for the insertion of a voter's name, address and signature.

(4) A nurse who has been sent a ballot-paper, an envelope and a copy of the candidate information sheet under this clause and who wishes to vote must complete the ballot-paper in accordance with the directions printed on the ballot-paper and must send or deliver it to the returning officer folded, enclosed and sealed in the envelope addressed to the returning officer.

(5) The returning officer may supply a duplicate ballot-paper to a nurse to whom a ballot-paper was forwarded if

- (a) the nurse makes a written application to the returning officer for a duplicate ballot-paper; and

- (b) the returning officer is satisfied that the ballot-paper forwarded to the nurse has been lost or destroyed.
- (6) An election is not invalid because:
 - (a) a nurse did not receive a ballot-paper, envelope or copy of the candidate information sheet; or
 - (b) the returning officer did not receive a ballot-paper or envelope sent by a nurse.

Examination of envelopes

12. (1) The returning officer must, after receiving an envelope purporting to contain a ballot-paper in a poll of a class of nurses, examine the envelope for the purpose of deciding whether to accept or reject it.

- (2) The returning officer must reject the envelope if
 - (a) it does not have legibly marked on its outside a name, an address and a signature that appear to the returning officer to be those of a nurse of the appropriate class; or
 - (b) it is not sealed; or
 - (c) it is not received by the returning officer at or before the time stated on ballot-papers issued in respect of the election as the time at or before which the envelope is to be so received; or
 - (d) where there is more than one envelope purporting to be from the same nurse and in respect of a poll of the same class—the envelope appears to the returning officer on any reasonable evidence to bear a falsified signature or, if it does not so appear, the envelope was received by the returning officer after the first envelope which purports to be from that nurse.

Formal votes

- 13. (1)** On the day fixed for the poll, the returning officer must:
- (a) open all the envelopes received except those envelopes rejected under clause 12 and extract the ballot-papers, and, without unfolding them, place the ballot-papers in a ballot-box; and
 - (b) mix the ballot-papers and draw them at random; and
 - (c) unfold them, reject those that are informal, and count and record, in accordance with Part 3, the votes recorded on those that are formal.
- (2) The returning officer must reject a ballot-paper as being informal if:
- (a) it has not been printed in accordance with clause 11 and initialled by the returning officer; or

- (b) it contains any matter by which the voter who marked the ballot-paper may be identified; or
- (c) it is not completed in accordance with the directions printed on it, and, in the opinion of the returning officer, the voter's intention is not clearly indicated on it.

Scrutiny

14. (1) Each candidate may appoint, in writing, a scrutineer to represent that candidate.

(2) The scrutineer may be present at any stage from the examination of the envelopes to the counting of the votes by the returning officer (including both those stages).

Choosing a candidate by lot

15. Where a candidate's name is to be chosen by lot, it is to be chosen as follows:

- (a) the names of the 2 or more candidates (one of whose names is to be chosen by lot) are to be written on separate and similar slips of paper;
- (b) each slip is to be folded so as to prevent identification of the name on it;
- (c) the slips are to be mixed and drawn at random;
- (d) the name that is first drawn is the name chosen by lot.

Declaration of poll

16. The returning officer must, immediately after the result of a poll has been ascertained:

- (a) publicly declare the candidates (or candidate) elected (declaring this by notice published in the Gazette and in at least 1 daily newspaper published or circulating in New South Wales); and
- (b) notify the Minister of the result.

PART 3—DISTRIBUTION OF VOTES

Division 1—Registered nurse candidates

Application of Division

17. This Division applies to the election of registered nurse candidates to the Board.

Primary votes

18. (1) Preferences up to the ordinal number which corresponds with the number of candidates to be elected in a ballot of registered nurses are to be taken as primary votes.

(2) The returning officer is to total the primary votes for each candidate.

(3) The returning officer is to place the first preference votes cast for each one of the candidates in a separate bundle.

Situation where 1 more candidate than number to be elected

19. If there is 1 more candidate than the number to be elected, the returning officer is to determine the election of candidates by the following procedure:

- (a) the candidate with the smallest number of primary votes is to be excluded;
- (b) if no candidate can be so excluded, the candidate who receives the smallest number of first preference votes is to be excluded;
- (c) if no candidate can be so excluded because 2 or more candidates have an equal number of first preference votes, the candidate of those 2 or more candidates whose name is determined by lot in accordance with clause 15 is to be excluded;
- (d) the remaining candidates are to be declared elected.

Situation where 2 or more candidates more than number to be elected

20. If the number of candidates is at least 2 greater than the number to be elected, the returning officer is to determine the election of candidates in accordance with Schedule 1.

Division 2—Enrolled nurse and enrolled nurse (mothercraft) candidates**Application of Division**

21. This Division applies to the election of an enrolled nurse, or enrolled nurse (mothercraft), candidate to the Board.

Determining the election

22. (1) The returning officer is to total the first preference votes for each candidate.

(2) If a candidate has an absolute majority of first preference votes, he or she is to be declared elected.

(3) If not, the returning officer is to follow the procedure in Schedule 2.

**SCHEDULE 1—REGISTERED NURSES ELECTION WHERE 2
OR MORE CANDIDATES MORE THAN NUMBER TO BE
ELECTED**

(Cl. 20)

1. Exclude the candidate with the smallest number of primary votes.
2. If no candidate can be excluded under clause 1, exclude the candidate with the smallest number of first preference votes.
3. If no candidate can be excluded under clause 2 because 2 or more candidates have equal numbers of first preference votes, choose one of those candidates by lot and exclude him or her.
4. After excluding a candidate under clause 1, 2 or 3, distribute so many of the ballot papers with first preference votes cast for the excluded candidate as have a next available preference on them to the bundles of ballot papers with first preference votes for the continuing candidates. Do this in accordance with that next available preference.
5. Add the numbers of ballot papers so distributed respectively to the numbers of primary votes for each of the continuing candidates.
6. Exclude the one continuing candidate with the smallest total of votes under clause 5.
7. If no one can be excluded under clause 6, exclude the continuing candidate who has the smallest number of primary votes.
8. If no one can be excluded under clause 7, exclude the continuing candidate who has the smallest number of first preference votes.
9. If no one can be excluded under clause 8 because 2 or more continuing candidates have equal numbers of first preference votes, choose one of those candidates by lot and exclude him or her.
10. If at this stage the number of continuing candidates equals the number to be elected, declare them elected.
11. If at this stage more than that number remain, distribute so many of the ballot papers in the bundle for the last excluded continuing candidate

as have a next available preference on them to the bundles of ballot papers for the now continuing candidates. Do this in accordance with that next available preference.

12. Add the numbers of ballot papers so distributed respectively to the totals obtained under clause 5, but only for each of the continuing candidates.

13. Exclude the continuing candidate with the smallest total of votes under clause 12.

14. If no one can be excluded under clause 13, exclude the continuing candidate with the smallest number of votes at the immediately previous count.

15. If no one can be excluded under clause 14, exclude the continuing candidate who has the smallest number of primary votes.

16. If no one can be excluded under clause 15, exclude the continuing candidate who has the smallest number of first preference votes.

17. If no one can be excluded under clause 16 because 2 or more continuing candidates have equal numbers of first preference votes, choose one of those candidates by lot and exclude him or her.

18. If at this stage the number of continuing candidates equals the number to be elected, declare them elected.

19. If at this stage more than that number remain, repeat the process of

- (a) distributing so many of the ballot papers in the bundle for the last excluded continuing candidate as have a next available preference on them to the bundles of ballot papers for the still continuing candidates; and
- (b) doing this in accordance with that next available preference; and
- (c) adding the number of ballot papers so distributed respectively to the totals next previously obtained for each of the still continuing candidates; and
- (d) excluding one of those candidates according to the method in clauses 13–17 (treating the reference in clause 13 to the smallest total of votes as a reference instead to the smallest sum obtained under paragraph (c) of this clause),

until all but the number of candidates to be elected have been excluded. Declare the still-continuing candidates elected.

**SCHEDULE 2—ENROLLED NURSES ELECTION WHERE NO
INITIAL ABSOLUTE MAJORITY**

(Cl. 22)

1. If there are only 2 candidates, and they are tied, choose one by lot under clause 15 of this Regulation, and exclude hm or her. Declare the other elected, and ignore the following clauses.
2. If there are 3 or more candidates:
 - (a) exclude the one (if any) with the fewest first preference votes; or
 - (b) if there are 2 or more tied on the lowest number of first preference votes—choose one by lot and exclude him or her.
3. Distribute so many of the first preference votes cast for the excluded candidate as have a next preference on them to the bundles of first preference votes cast for the continuing candidates. Do this in accordance with that next preference.
4. Add the numbers of votes so distributed respectively to the numbers of first preference votes for each of the continuing candidates.
5. Declare elected any continuing candidate who, at this point, has an absolute majority.
6. If there is no such candidate:
 - (a) exclude the one (if any) with the fewest first preference votes;
 - (b) if there are 2 or more tied on the lowest number of first preference votes—exclude the one:
 - (i) who had the fewest votes at the last clause 4 addition at which they did not tie; or
 - (ii) who, if they tied at all previous additions, is chosen by lot.
7. Repeat the procedure in clauses 3, 4 and 6 until one still-continuing candidate has an absolute majority or is the only one left. Declare him or her elected.

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EXPLANATORY NOTE

This is a transitional machinery regulation to ensure that a new Nurses Registration Board can be elected to serve under the new Nurses Act 1991 when that Act commences.

To ensure that there is no significant gap between old and new Boards, it is necessary for the electoral machinery to be set in motion well before the commencement of the new Act. Schedule 3 (notably clauses 2 and 5) of the new Act allows a regulation to be made for this purpose. In view of the regulation's transitional nature, it is expressed to apply only to the first election of the new Board.