

1995—No. 470

DRAINAGE ACT 1939—REGULATION

(Drainage (Elections) Regulation 1995)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Drainage Act 1939, has been pleased to make the Regulation set forth hereunder.

KIM YEADON, M.P.,
Minister for Land and Water Conservation.

PART 1—PRELIMINARY

Citation

1. This Regulation may be cited as the Drainage (Elections) Regulation 1995.

Commencement

2. This Regulation commences on 1 September 1995.

Definition

3. In this Regulation:

“the Act” means the Drainage Act 1939.

PART 2—ROLL OF VOTERS**Preparation of roll**

4. The time within which the Returning Officer must prepare a roll of voters under section 29 of the Act is:

- (a) in the case of the first election of directors after a union has been constituted—not later than 7 days after the constitution; and
- (b) in the case of an ordinary election of directors—not later than 1 October in the year in which the election is to be held; and
- (c) in the case of an election to fill an extraordinary vacancy—not later than 7 days after the vacancy occurs; and
- (d) in a case where the Ministerial Corporation has directed an election as referred to in section 37 of the Act—not later than 7 days after the date of the direction.

Form of roll

5. A roll must be in a form approved by the Ministerial Corporation.

Appointment of place and date of revision of roll

6. (1) On the preparation of a roll, the Returning Officer must refer it to a Magistrate (having jurisdiction in any part of the district) for revision.

(2) The Magistrate is to appoint a place and date for the revision.

(3) Not later than 14 days before the revision, the Returning Officer must give public notice of it by publishing an advertisement in a newspaper circulating in the district.

(4) The advertisement must contain:

- (a) details of the place at which and the time within which a copy of the roll will be available for inspection; and
- (b) information regarding the right to make claims and objections concerning the roll.

Revision of roll

7. (1) For the purposes of section 29 (4) of the Act, a Magistrate constituting a revision court must revise a roll by:

- (a) inserting on the roll the name of any person, on proof that the person is qualified to be on the roll; and
- (b) removing from the roll the name of any person, on proof that the person is not qualified to be on the roll; and

- (c) removing or correcting enrolments, as may be necessary by reason of error, change of name, death or other sufficient reason; and
- (d) altering the roll by increasing or decreasing the number of votes to which a person is entitled, on proof that the number should be so increased or decreased.

(2) The Magistrate must, at the end of the roll, certify that it has been revised as correct as at the date of the certificate.

PART 3—CONDUCT OF ELECTIONS

Nomination day

8. (1) Nominations of candidates for an election of directors close at 5 p.m. on a Friday fixed by the Returning Officer.

(2) The nomination day must not be less than:

- (a) 14 days before polling day, in the case of an election to fill an extraordinary vacancy; and
- (b) 21 days before polling day, in the case of any other election.

(3) Not less than 7 days before nomination day, the Returning Officer must issue nomination papers to the persons entitled to vote at the election.

Nominations

9. Nominations must be signed by 2 persons whose names are on the roll of voters and must include the consent of the nominee.

Uncontested elections

10. If, after the time for close of nominations, the number of accepted nominations does not exceed the number of persons to be elected, the Returning Officer must declare the persons nominated to be elected.

Contested elections

11. (1) If, after the time for close of nominations, the number of accepted nominations exceeds the number of persons to be elected, the Returning Officer must issue ballot-papers to the persons whose names are on the roll of voters.

(2) The ballot-papers must be issued not later than 7 days before the election.

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(3) The Returning Officer may prescribe a shorter interval if considered necessary in order for the election to be conducted at the time fixed for it.

(4) Each voter must be issued with one ballot-paper for each vote to which the voter is entitled.

(5) Each ballot-paper must contain the names of the candidates in alphabetical order and be signed or initialled by the Returning Officer.

(6) Each ballot-paper (or, if the elector is entitled to more than one vote, each set of ballot-papers) must be accompanied by:

- (a) a form of declaration of identity and of entitlement to vote at the election; and
- (b) 2 envelopes, one marked “ballot-paper” and the other addressed to the Returning Officer; and
- (c) a notice which:
 - (i) specifies the time by which the completed ballot-papers must reach the Returning Officer (being the time fixed for the election); and
 - (ii) contains instructions for the completion of ballot-papers and for their transmission to the Returning Officer.

Voting

12. (1) A voter must record his or her vote on a ballot-paper by placing a cross opposite the name of each candidate for whom he or she votes.

(2) A voter must post or deliver to the Returning Officer the completed ballot-paper or papers enclosed and sealed in the envelope marked “ballot-paper” which, together with the completed declaration, must be enclosed and sealed in the envelope addressed to the Returning Officer.

Duplicate ballot-papers

13. (1) The Returning Officer may, on receipt of a declaration by a person that a ballot-paper has been lost or destroyed, issue a duplicate ballot-paper to the person.

(2) A voter who satisfies the Returning Officer that a ballot-paper has been spoiled by mistake or accident may, on returning it, be issued with a new ballot-paper.

(3) The Returning Officer must cancel and preserve the spoiled ballot-paper.

Poll clerks and scrutineers

14. (1) The Returning Officer may appoint poll clerks if required.

(2) Each candidate may nominate one scrutineer who is entitled to be present during the counting of votes.

(3) A candidate must not be a poll clerk or scrutineer.

Counting of votes

15. As soon as practicable after the time for closing of the poll, the Returning Officer must:

- (a) open the outer envelopes received before that time; and
- (b) if the declaration is signed by a qualified voter, place the envelope marked “ballot-paper” with other such envelopes; and
- (c) following the opening of all the outer envelopes, open the envelopes marked “ballot-paper” and take out the ballot-papers; and
- (d) reject such ballot-papers as are found to be informal; and
- (e) count the number of votes given to each candidate.

Informal votes

16. (1) The Returning Officer must reject as informal a ballot-paper:

- (a) which is not signed or initialled by the Returning Officer; or
- (b) on which votes are marked for more candidates than the number of persons to be elected; or
- (c) from which the intention of the voter cannot be clearly ascertained; or
- (d) in the marking of which the voter has not complied with this Regulation or the instructions of the Returning Officer.

(2) A ballot-paper is not informal by reason only that the voter has not recorded his or her vote exactly as prescribed if, in the opinion of the Returning Officer, the intention of the voter can be clearly ascertained.

Declaration of poll

17. The result of a poll for an election must be ascertained by the Returning Officer as follows:

- (a) the candidates, not exceeding in number the number of persons to be elected, who received the highest numbers of votes are to be declared to be elected;

- (b) if there is an equality of votes, the Returning Officer is to determine by lot the candidate to be elected.

Notification of election result

18. As soon as practicable after declaration of a poll, the Returning Officer must issue to each person elected a notice in writing of the result of the election.

Disposal of election papers

19. (1) After the declaration of a poll the Returning Officer must send all papers connected with the election to the Board.

(2) The Board must keep the papers for at least 12 months after the election.

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EXPLANATORY NOTE

The object of this Regulation is to remake, without any major changes in substance, the provision of the Drainage Regulations 1939 dealing with elections of directors of drainage unions formed under the Drainage Act 1939. The remainder of the Drainage Regulations 1939 are being remade as the Drainage (General) Regulations 1995. The new Regulations deals with the following matters:

- (a) the preparation and revision of rolls of voters (Part 2);
- (b) the conduct of elections (including the nomination of candidates, voting, counting of votes and declaration of poll) (Part 3);
- (c) other minor, consequential or ancillary matters (Part 1).

This Regulation is made under the Drainage Act 1939, including sections 15 and 17 (election of directors), section 23 (duties of returning officers), section 29 (preparation and revision of rolls) and section 78 (the general regulation making power).

This Regulation comprises or relates to matters of a machinery nature.

This Regulation is made in connection with the staged repeal of subordinate legislation under the Subordinate Legislation Act 1989.
