

1991 - No. 245

NEW SOUTH WALES LOTTERIES ACT 1990 - REGULATION

(New South Wales Lotteries (Elected Staff Member)
Regulation 1991)

NEW SOUTH WALES



[Published in Gazette No. 82 of 24 May 1991]

HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the New South Wales Lotteries Act 1990, has been pleased to make the Regulation set forth hereunder.

IAN R. CAUSLEY
Chief Secretary.

PART 1 - PRELIMINARY

Citation

1. This Regulation may be cited as the New South Wales Lotteries (Elected Staff Member) Regulation 1991.

Commencement

2. This Regulation commences on 23rd May, 1991.

Definitions

3. In this Regulation:

"**approved**" means approved for the time being by the General Manager;

"**close of nominations**", in relation to an election, means the time and date for the close of nominations in the election, fixed by a notification:

- (a) except as provided by paragraph (b) - published pursuant to clause 4 (1) (a); or
- (b) if the Electoral Commissioner fixes a later time and date for the close of nominations in the election than that fixed by a previous notification in respect of the election - published pursuant to clause 5;

"close of the ballot", in relation to an election, means the time and date for the close of the ballot in the election, fixed by a notification:

- (a) except as provided by paragraph (b) - published pursuant to clause 4 (1) (a); or
- (b) if the Electoral Commissioner fixes a later time and date for the close of the ballot in the election than that fixed by a previous notification in respect of the election - published pursuant to clause 5;

"election" means an election of a person to hold office as the elected staff member of the Board of Management of NSW Lotteries referred to in section 11 (3) of the Act;

"Electoral Commissioner" means the Electoral Commissioner for New South Wales;

"employee" means an employee of NSW Lotteries other than a temporary staff member;

"roll", in relation to an election, means the roll of employees constituted under this Regulation for the purposes of the election;

"the Act" means the New South Wales Lotteries Act 1990.

PART 2 - CALLING OF ELECTION

Calling of election

4. (1) The Electoral Commissioner must, as soon as practicable after being notified in writing by the Minister that an election is required to be held:

- (a) cause to be published in the Gazette and in at least 1 daily newspaper circulating throughout New South Wales a notification:
 - (i) stating that an election is to be held; and
 - (ii) inviting nominations; and
 - (iii) advising where nomination forms may be obtained; and

- (iv) fixing the close of nominations; and
- (v) fixing the close of the ballot; and
- (b) notify the General Manager in writing that an election is to be held and of the times and dates fixed pursuant to paragraph (a) (iv) and (v).

(2) The close of nominations fixed in respect of an election is to be not less than 21 days nor more than 28 days after the first publication in a newspaper of the notification referred to in subclause (1) (a) in respect of the election.

(3) The close of the ballot fixed in respect of an election is to be not less than 28 days after the close of nominations in respect of the election.

Extension of time

5. (1) Despite clause 4, the Electoral Commissioner may, if of the opinion that an election would fail, by a notification in a form similar to and published in the same manner as a notification referred to in clause 4 (1) (a), fix a later time and date in respect of the election for the close of nominations or the close of the ballot than that fixed by a previous notification in respect of the election.

(2) A notification published under subclause (1) must not fix a time and date more than 14 days after the time and date fixed by a previous notification in respect of the election.

(3) The power conferred on the Electoral Commissioner by subclause (1) in respect of an election may be exercised more than once in respect of the election.

PART 3 - NOMINATIONS ETC.

Nominations for elected member

6. (1) A nomination of a candidate at an election must be in the approved form and must contain the full names, residential addresses and signatures of not less than 2 nominators, being persons who are employees.

(2) The returning officer must reject a nomination of a candidate at an election if it is received by the returning officer after the close of nominations.

Withdrawal of nomination

7. A candidate at an election may withdraw the candidate's nomination by notice in writing delivered to the returning officer at any time before the close of nominations.

Candidate information sheet

8. (1) A candidate at an election may, at any time before the close of nominations, submit to the returning officer a statutory declaration in the approved form containing information intended for inclusion in a candidate information sheet.

(2) If, by the close of nominations, 2 or more persons have been nominated as candidates, the returning officer is to draw up a candidate information sheet consisting of the information in the statutory declarations submitted by candidates.

(3) If the returning officer considers that the information contained in a statutory declaration:

- (a) is not, in the returning officer's opinion, appropriate for inclusion in a candidate information sheet; or
- (b) is misleading in any material particular; or
- (c) is of a length greater than that permitted by the approved form,

the returning officer may, in drawing up the candidate information sheet, omit the information, omit or rectify that particular or reduce the length of the information, as the case requires.

Uncontested election

9. If, by the close of nominations, only 1 person has been nominated as a candidate at an election, that person is elected.

Contested election

10. If, by the close of nominations, 2 or more persons have been nominated as candidates at an election, a ballot is to be held.

PART 4 - THE BALLOT

Delivery of roll to returning officer

11. (1) If a ballot is to be held in an election, the returning officer must as soon as practicable after the close of nominations notify the

General Manager that a ballot is to be held and that the General Manager is to deliver to the returning officer within 7 days:

- (a) a roll on which is endorsed a certificate in the approved form and which includes:
 - (i) the name of each person who is an employee; and
 - (ii) the residential address of each such person, as at the close of nominations; and
- (b) a label for each person included on the roll, of a size suitable for affixing to an envelope, on which the name and address of each such person is inscribed.

(2) The General Manager must comply with a requirement under subclause (1).

Printing of ballot-papers, directions to voters etc.

12. (1) If a ballot is to be held for an election, the returning officer must as soon as practicable after the close of nominations:

- (a) determine the order in which the candidates' names are to be listed on a ballot-paper by means of a ballot held in accordance with the procedure prescribed for the purposes of section 82A of the Parliamentary Electorates and Elections Act 1912; and
- (b) cause to be printed sufficient ballot-papers so that a ballot-paper can be forwarded to each person included on the roll; and
- (c) if the returning officer has drawn up a candidate information sheet, cause sufficient copies of it to be printed so that a copy can be forwarded to each person included on the roll.

(2) The ballot-paper for an election must contain:

- (a) the names of the candidates arranged in the order determined in accordance with subclause (1) (a), with a small square opposite each name; and
- (b) if, in the opinion of the returning officer, the names of 2 or more of the candidates are so similar as to cause confusion, such other matter as will, in the opinion of the returning officer, distinguish between those candidates; and
- (c) such directions as to the manner in which the vote is to be recorded and returned to the returning officer as are required by subclause (3) and as the returning officer considers appropriate.

- (3) The directions to voters must include a direction that:
- (a) the voter must record a vote for at least 1 candidate by placing the number "1" in the square opposite the name of the candidate for whom the voter desires to give his or her first preference vote; and
 - (b) the voter may, if the voter wishes, vote for additional candidates by placing consecutive numbers beginning with the number "2" in the squares opposite the names of those additional candidates in the order of the voter's preferences for them.

Distribution of ballot-papers

13. The returning officer must, as soon as practicable after the printing of the ballot-papers, transmit to each person included on the roll for the election:

- (a) a ballot-paper initialled by the returning officer or a person authorised by the returning officer in that behalf; and
- (b) an unsealed envelope addressed to the returning officer and bearing on the back the words "Name and address of voter" and "Signature of voter", together with appropriate spaces for the insertion of the name, address and signature; and
- (c) where applicable, a candidate information sheet drawn up pursuant to clause 8 (2).

Duplicate ballot-papers

14. (1) If any person to whom a ballot-paper has been transmitted under clause 13 satisfies the returning officer by statutory declaration that the ballot-paper has been spoilt, lost or destroyed, and that the person has not already voted at the election to which the ballot-paper relates, the returning officer may, at any time before the close of the ballot, issue to the voter a new ballot-paper and envelope.

(2) The returning officer is to maintain a record of all duplicate ballot-papers issued under subclause (1).

Recording of vote

15. A person included on the roll for an election who wishes to vote at the election must, on receipt of a ballot-paper:

- (a) record the person's vote on the ballot-paper in accordance with the directions shown on it; and

- (b) place the completed ballot-paper, folded so that the vote cannot be seen, in the envelope addressed to the returning officer and forwarded with the ballot-paper; and
- (c) seal the envelope; and
- (d) complete the person's full name and address on, and sign, the back of the envelope; and
- (e) return the envelope to the returning officer so as to be received by the returning officer not later than the close of the ballot.

PART 5 - THE SCRUTINY

Receipt of ballot-papers

16. (1) In any ballot, the returning officer must reject any envelope purporting to contain a ballot-paper if the envelope:

- (a) is not received by the returning officer before the close of the ballot; or
- (b) is unsealed,

without opening the envelope or inspecting the ballot-paper.

(2) On receipt, before the close of the ballot, of an envelope purporting to contain a ballot-paper, the returning officer is to examine the name on the back of the envelope and:

- (a) if the returning officer is satisfied that a person of that name is included on the roll for the election, accept the ballot-paper in that envelope for scrutiny without opening the envelope and draw a line through that person's name on the roll; or
- (b) if the returning officer is not so satisfied, or if a name, address or signature does not appear on the back of the envelope, reject the ballot-paper in the envelope without opening the envelope.

(3) If it appears to the returning officer that the signature appearing on the back of any envelope referred to in subclause (2) is not the signature of the person whose name and address appear on the back of the envelope, the returning officer may make such inquiries as the returning officer thinks fit and if, after making those inquiries, the returning officer is satisfied that the signature is not the signature of that person, is to reject any ballot-paper in the envelope without opening the envelope.

Ascertaining result of ballot

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

Scrutineers

18. Each candidate in a ballot is entitled to appoint, by notice in writing, a scrutineer to represent the candidate at the scrutiny of votes in accordance with section 90 of the Parliamentary Electorates and Elections Act 1912.

Scrutiny of votes

19. (1) At the scrutiny of votes in a ballot, a ballot-paper must be rejected as informal if:

- (a) it is neither initialled by the returning officer (or a person authorised by the returning officer) nor bears a mark prescribed as an official mark for the purposes of section 122A (3) of the Parliamentary Electorates and Elections Act 1912; or
- (b) it has on it any mark or writing which, in the opinion of the returning officer, will enable any person to identify the voter who completed it; or
- (c) it has not been completed in accordance with the directions shown on it.

(2) A ballot-paper is not to be rejected as informal merely because:

- (a) of any mark or writing on it which is not authorised or required by this Regulation, not being a mark or writing referred to in subclause (1) (b), if, in the opinion of the returning officer, the voter's intention is clearly indicated on the ballot-paper; or
- (b) if the voter has recorded a vote by placing in a square the number "1":
 - (i) the same preference (other than a first preference) has been recorded on the ballot-paper for more than one candidate; or
 - (ii) there is a break in the order of preferences recorded on the ballot-paper.

(3) The scrutiny of votes in a ballot is to be conducted as follows:

- (a) the returning officer is to produce unopened the envelopes containing the ballot-papers accepted for scrutiny under clause

- 16 (2) (a) in respect of the ballot, other than any envelope purporting to contain a ballot-paper rejected under clause 16 (3);
- (b) the returning officer is then to open each such envelope, extract the ballot-paper and, without unfolding it, place it in a locked ballot-box;
 - (c) when the ballot-papers from all the envelopes opened as referred to in paragraph (b) have been placed in the ballot-box, the returning officer is then to unlock the ballot-box and remove the ballot-papers;
 - (d) the returning officer is then to examine each ballot-paper and reject those which are informal;
 - (e) the returning officer is then to proceed to count the votes and ascertain the result of the election in accordance with clause 20.

Counting of votes

20. (1) In this clause:

"absolute majority of votes", in relation to any count, means a greater number than one-half of the number of ballot-papers counted;

"continuing candidate", in relation to any count, means a candidate not excluded at a previous count.

(2) A reference in this clause to an exhausted ballot-paper in relation to any count is a reference to a ballot-paper on which there is not recorded a vote for a continuing candidate.

(3) For the purposes of subclause (2):

- (a) where the same preference (other than a first preference) has been recorded on a ballot-paper for more than 1 candidate, the ballot-paper is to be treated as if those preferences and any subsequent preference had not been recorded on the ballot-paper; or
- (b) where there is a break in the order of preferences recorded on a ballot-paper, the ballot-paper is to be treated as if any subsequent preference had not been recorded on the ballot-paper.

(4) The returning officer is to ascertain the total number of first preference votes recorded for each candidate on all ballot-papers not rejected as informal.

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(5) If a candidate has an absolute majority of the first preference votes, the candidate is elected.

(6) If no candidate is elected under subclause (5), the returning officer is to make a second count.

(7) On the second count, the candidate who has the fewest first preference votes is to be excluded, and each of the candidate's ballot-papers that is not exhausted is to be transferred to the candidate next in the order of the voter's preference and counted to him or her as a vote.

(8) If, on the second count, a candidate has an absolute majority of the votes remaining in the count, the candidate is elected.

(9) If, on the second count, no candidate has an absolute majority of the votes remaining in the count, the process of excluding the candidate who has the fewest votes, transferring each of the candidate's ballot-papers that is not exhausted to the continuing candidate next in the order of the voter's preference and counting it to him or her as a vote is to be repeated by the returning officer until 1 candidate has a majority of the votes remaining in the count.

(10) The candidate who, in accordance with subclause (9), has an absolute majority of the votes remaining in the count is elected.

(11) Despite subclauses (7) and (9), the process of transferring to a continuing candidate each of the ballot-papers that is not exhausted and counting it to him or her as a vote is not to be repeated if there is only 1 continuing candidate, but that 1 continuing candidate is elected.

(12) If, on any count at which the candidate with the fewest number of votes has to be excluded, 2 or more candidates have an equal number of votes (that number being fewer than the number of votes that any other candidate has or those candidates being the only continuing candidates):

- (a) such 1 of those candidates as had the fewest number of votes at the last count at which they did not have an equal number of votes is to be excluded; or
- (b) if they had an equal number of votes at all preceding counts, the candidate whose name is on a slip drawn in accordance with subclause (13) is to be excluded.

(13) For the purposes of subclause (12), the names of the candidates who have an equal number of votes having been written on similar slips of paper by the returning officer, and the slips having been folded so as to prevent the names being seen and having been mixed, 1 of those slips is to be drawn at random by the returning officer.

PART 6 - MISCELLANEOUS

Death of candidate

21. If a candidate dies after the close of nominations and before the close of the ballot for an election:

- (a) the returning officer is to cause a notification of the death to be published in the Gazette; and
- (b) all proceedings in the election taken after the Minister notified the Electoral Commissioner that the election was required to be held are to be taken to have no effect and those proceedings must again be taken.

Decision of returning officer final

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

Notification of result of election

23. As soon as practicable after a candidate is elected, the Electoral Commissioner must:

- (a) notify the Minister in writing of the candidate who has been elected; and
- (b) cause to be published in the Gazette a notice that the candidate has been elected.

Offences

24. Any person who:

- (a) votes or attempts to vote more than once in any election; or
- (b) votes or attempts to vote in an election in which the person is not entitled to vote; or
- (c) makes a false or wilfully misleading statement (not being a statement verified by statutory declaration):

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- (i) to the returning officer in connection with an election;
or
- (ii) in any document that the person furnishes for the purposes of an election,

is guilty of an offence.

Maximum penalty 5 penalty units.

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EXPLANATORY NOTE

The object of this Regulation is to set out the procedures to be followed for the election of a person to hold office as elected staff member of NSW Lotteries in accordance with section 11 (3) of the New South Wales Lotteries Act 1990.
