

**DRIED FRUITS ACT 1939—REGULATION**

(Dried Fruits (Elections) Regulation 1993)

NEW SOUTH WALES



*[Published in Gazette No. 94 of 27 August 1993]*

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

I. R. CAUSLEY, M.P.,  
Minister for Agriculture and Fisheries.

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**PART I—PRELIMINARY**

**Citation**

1. This Regulation may be cited as the Dried Fruits (Elections) Regulation 1993.

**Commencement**

2. This Regulation commences on 1 September 1993.

**Definitions**

(1) In this Regulation:

“**calling of the ballot**”, in relation to an election, means the date on which a notice is first published under clause 14 in respect of the election;

“**close of enrolment**” in relation to an election, means the final time and date fixed by the returning officer for the close of enrolments in the election;

**“close of exhibition of the roll”**, in relation to an election, means the final time and date fixed by the returning officer for the close of exhibition of the roll in the election;

**“close of nominations”**, in relation to an election, means the final time and date fixed by the returning officer for the close of nominations in the election;

**“close of the ballot”**, in relation to an election, means the final time and date fixed by the returning officer for the close of the ballot in the election;

**“election”** means an election under section 7 or 8 of the Act;

**“final roll”**, in relation to an election, means the roll prepared for the election by the returning officer under Part 5;

**“preliminary roll”**, in relation to an election, means the roll for the election with which the returning officer is provided under clause 13;

**“the Act”** means the Dried Fruits Act 1939.

(2) In this Regulation, a reference to a Form is a reference to a Form set out in Schedule 1.

### **Returning officer**

4. (1) The Electoral Commissioner for New South Wales is the returning officer for the purposes of this Regulation.

(2) The Electoral Commissioner may delegate to any member of staff of the State Electoral Office any of the returning officer’s functions under this Regulation, other than this power of delegation.

## **PART 2—CALLING OF THE ELECTION**

### **Notice of election**

5. (1) As soon as practicable after having been notified by or on behalf of the Minister that an election is required to be held, the returning officer:

- (a) must cause to be published, in at least 1 newspaper circulating generally throughout New South Wales, a notice calling for the nomination of candidates for the election; and
- (b) must notify the Secretary in writing that an election is to be held and of the time and date for the close of nominations, as stated in the notice published under paragraph (a).

(2) The notice referred to in subclause (1) (a):

- (a) must state that an election is to be held; and

- (b) must call for the nomination of candidates; and
- (c) must fix the time and date for the close of nominations; and
- (d) must state the places where nominations may be lodged; and
- (e) must state the qualifications which entitle a person to nominate, or to be nominated as, a candidate.

(3) The close of nominations is to be not earlier than 21 days, and not later than 28 days, after the date on which the notice is first published.

#### **Postponement of close of nominations**

6. (1) The returning officer may, by a notice in a form similar to, and published in the same manner as, the notice calling for the nomination of candidates, postpone (for a period not exceeding 14 days) the close of nominations in an election.

(2) The power conferred on a returning officer by this clause may be exercised more than once in respect of an election.

### **PART 3—NOMINATIONS**

#### **Qualifications for candidates and for nominating candidates**

7. A person is qualified to nominate, or to be nominated as, a candidate for an election if, and only if, the person is eligible to be included in the final roll for the election.

#### **Nomination of candidates**

8. (1) A nomination of a candidate:

- (a) must be in Form 1; and
- (b) must be made by at least 2 persons (other than the candidate) who are qualified to nominate a candidate; and
- (c) must contain a statement, signed by the candidate, stating that he or she consents to the nomination and will act as a member of the Board if elected; and
- (d) must be lodged with the returning officer before the close of nominations.

(2) If the returning officer considers that an insufficient number of the persons by whom a candidate has been nominated are qualified to nominate the candidate, the returning officer must, as soon as practicable after receiving the nomination, cause notice of that fact to be given to the candidate.

(3) The returning officer may, in order to decide whether a person who nominates a candidate in an election is qualified to do so, require the Secretary to provide the returning officer with such information regarding the person as the returning officer specifies.

(4) The Secretary is to comply with such a requirement as soon as practicable.

### **Withdrawal of nomination**

9. A candidate who has been nominated in an election may, by notice in writing given to the returning officer, withdraw the nomination at any time before the close of nominations.

### **Uncontested elections**

10. If, by the close of nominations, only one person has been duly nominated as a candidate, that person is taken to have been elected.

### **Contested elections**

11. If, by the close of nominations, 2 or more persons have been duly nominated as candidates, a ballot must be held.

### **Candidate information sheets**

12. (1) A candidate may, at any time before the close of nominations, submit to the returning officer a statutory declaration in Form 2 containing information intended for inclusion in a candidate information sheet.

(2) If a ballot is to be held, the returning officer must draw up a candidate information sheet consisting of the information contained in the statutory declarations submitted by the candidates.

(3) The returning officer may, in drawing up a candidate information sheet, omit so much of the information contained in a candidate's statutory declaration as the returning officer considers:

- (a) to be false or misleading; or
- (b) to be inappropriate for inclusion in the candidate information sheet; or
- (c) to exceed the maximum amount of information that is suitable for inclusion in the candidate information sheet.

**PART 4—CALLING OF THE BALLOT****Preparation of preliminary roll**

**13. (1)** As soon as practicable after it becomes apparent that a ballot must be held for an election, the returning officer must notify the Secretary:

- (a) that a ballot is to be held for the election; and
  - (b) that a preliminary roll for the election is required.
- (2)** The Secretary must provide the returning officer with:
- (a) a preliminary roll of the persons who, in the opinion of the Secretary, are qualified to vote in the election; and
  - (b) an appropriately addressed label, or an appropriately addressed envelope, for each person whose name is included in that roll.
- (3)** A preliminary roll:
- (a) must contain the full names (consecutively numbered and listed in alphabetical order) and addresses of the persons whose names are included in the roll; and
  - (b) must be certified by the Secretary in accordance with Form 3.

**(4)** This clause does not apply to an election to be held as a consequence of an earlier election which has failed if a preliminary roll for the earlier election has already been provided to the returning officer.

**Notice of ballot**

**14. (1)** As soon as practicable after receiving the preliminary roll for an election, the returning officer must cause notice that a ballot is to be held:

- (a) to be published in at least one newspaper circulating generally throughout New South Wales; or
  - (b) to be sent by post to each person whose name is included in the preliminary roll for the election.
- (2)** The following particulars must be included in the notice:
- (a) the purpose for which the election is being conducted;
  - (b) the fact that a ballot is to be held;
  - (c) the time and date fixed for the close of exhibition of the preliminary roll;
  - (d) the places where copies of the preliminary roll will be exhibited;
  - (e) the time and date fixed for the close of enrolments;
  - (f) the qualifications which entitle a person to vote;

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- (g) the places where applications for enrolment and objections against enrolment may be lodged;
  - (h) the time and date fixed for the close of the ballot.
- (3) The close of exhibition of the roll is not to be earlier than 14 days after the calling of the ballot.
- (4) The close of enrolments is not to be earlier than 7 days after the close of exhibition of the roll or later than 14 days before the close of the ballot.
- (5) The close of the ballot is not to be earlier than 35 days, or later than 42 days, after the calling of the ballot.

**Postponement of ballot**

15. (1) The returning officer may, by notice published in the same way as the notice stating that a ballot is to be held, postpone (for a period not exceeding 14 days) the close of exhibition of the roll, the close of enrolments or the close of the ballot.

(2) The power conferred on a returning officer by this clause may be exercised more than once in respect of an election.

**PART 5—PREPARATION OF FINAL ROLL****Exhibition of preliminary roll**

16. The returning officer must cause copies of the preliminary roll to be exhibited for public inspection:

- (a) at the places where applications for enrolment and objections against enrolment may be lodged; and
- (b) for a period of at least 14 days ending at the close of exhibition of the roll.

**Application for enrolment by persons not already enrolled**

17. (1) A person whose name does not appear on the preliminary roll for an election may apply for enrolment in the final roll for the election.

(2) The application must be in Form 4 and must be lodged with the returning officer before the close of enrolments.

(3) On receipt of the application, the returning officer:

- (a) if satisfied that the applicant is entitled to enrolment, must accept the application and enter the name and address of the applicant in the final roll for the election; or

- (b) if not so satisfied, must reject the application and inform the applicant in writing that the application has been rejected; or
- (c) if the application is not in the proper form or is incomplete:
  - (i) must return the application to the applicant for correction or completion within a specified time; and
  - (ii) must consider the duly corrected or completed application in accordance with this clause.

### **Objections to enrolment**

**18. (1)** The returning officer and any person who is qualified to vote in an election may object to the inclusion of the name of any person in the final roll.

**(2)** An objection:

- (a) must be made in accordance with Form 5; and
- (b) must state the grounds on which the objection is made; and
- (c) must be signed by the objector; and
- (d) must be lodged with the returning officer (unless it is signed by the returning officer) before the close of enrolments.

**(3)** The returning officer must send particulars of an objection to the person to whom the objection relates.

**(4)** The person to whom an objection relates may lodge a written reply with the returning officer within 7 days after the date on which particulars of the objection were sent to the person.

**(5)** The returning officer must consider each objection, and any reply received within that 7 day period, and may make such inquiries as the returning officer thinks fit.

**(6)** The returning officer may accept or reject an objection.

**(7)** If the returning officer accepts an objection, the returning officer must exclude the name of the person to whom the objection relates from the final roll for the election and must inform the person and the objector, in writing, that the person's name is so excluded.

**(8)** If the returning officer rejects an objection, the returning officer must notify the person to whom the objection relates and the objector, in writing, that the returning officer has rejected the objection.

**(9)** The returning officer may require a person who lodges an objection, or who replies to an objection, to verify the objection or reply by statutory declaration.

**Postponement of ballot not to affect final roll**

**19.** The validity of the final roll for an election is not affected by the postponement of the close of the ballot by a notice published after the close of the roll, and the roll remains the final roll for the election.

**PART 6—THE BALLOT****Printing of ballot-papers**

**20. (1)** As soon as practicable after the close of enrolments in an election, the returning officer:

- (a) must determine the order in which the candidates' names are to be listed on the 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) must cause sufficient ballot-papers to be printed to enable a ballot-paper to be sent to each person whose name is included in the final roll; and
- (c) if a candidate information sheet has been duly drawn up, must cause sufficient copies to be printed so that a copy may be sent to each person whose name is included in the final roll.

**(2)** The ballot-paper must contain:

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

**(3)** The directions to voters must include the following:

- (a) that the voter must record a vote for at least one 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;



- (b) that the voter may, if the voter so 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**

**21.** The returning officer must, as soon as practicable after the printing of the ballot-papers for an election, send to each person included in the final roll for the election:

- (a) a ballot-paper that is initialled by the returning officer (or by a person authorised by the returning officer) or that bears a mark prescribed for the purposes of section 122A (3) of the Parliamentary Electorates and Elections Act 1912; and
- (b) an unsealed envelope addressed to the returning officer and bearing on the back the words “FULL NAME AND ADDRESS OF VOTER” and “SIGNATURE OF VOTER”, together with appropriate spaces for the insertion of a name, address and signature; and
- (c) if applicable, a candidate information sheet.

### **Duplicate ballot-papers**

**22. (1)** The returning officer may, at any time before the close of the ballot, issue to a voter a duplicate ballot-paper and envelope if the voter satisfies the returning officer by statutory declaration:

- (a) that the original ballot-paper has been spoilt, lost or destroyed; and
- (b) that the voter has not already voted in the election to which the ballot-paper relates.

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

### **Recording of votes**

**23.** In order to vote in an election, a person:

- (a) must record a vote on the ballot-paper in accordance with directions shown on it; and
- (b) must place the completed ballot-paper (folded so that the vote cannot be seen) in the envelope addressed to the returning officer; and
- (c) must seal the envelope; and

- (d) must complete the person's full name and address on, and must sign, the back of the envelope; and
- (e) must return the envelope to the returning officer so as to be received before the close of the ballot.

## **PART 7—THE SCRUTINY**

### **Receipt of ballot-papers**

**24. (1)** The returning officer must reject (without opening it) any envelope purporting to contain a ballot-paper if the envelope is not received before the close of the ballot or is received unsealed.

**(2)** The returning officer must examine the name on the back of each remaining envelope and, without opening the envelope:

- (a) must accept the ballot-paper in the envelope and draw a line through the name on the roll that corresponds to the name on the back of the envelope, if satisfied that a person of that name is included in the roll for the election; or
- (b) must reject the ballot-paper in the envelope, if not so satisfied or if a name, address or signature does not appear on the back of the envelope.

**(3)** The returning officer may reject a ballot-paper without opening the envelope if, after making such inquiries as the returning officer thinks fit:

- (a) the returning officer is unable to identify the signature on the back of the envelope; or
- (b) it appears to the returning officer that the signature on the back of the envelope is not the signature of the person whose name and address appear on the back of the envelope.

### **Ascertaining result of ballots**

**25.** The result of a ballot is to be ascertained by the returning officer as soon as practicable after the close of the ballot.

### **Scrutineers**

**26. (1)** Each candidate is entitled to appoint a scrutineer to represent the candidate at all stages of the scrutiny.

**(2)** A candidate who appoints a scrutineer must cause written notice of the appointment to be given to the returning officer.

**Scrutiny of votes**

**27. (1)** 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;
- (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 such envelopes 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 that are informal;
- (e) the returning officer is then to proceed to count the votes and ascertain the result of the election.

**(2)** At the scrutiny of votes, a ballot-paper must be rejected as informal:

- (a) if it is neither initialled by the returning officer (or by a person authorised by the returning officer to do so) 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) if it has on it any mark or writing which the returning officer considers could enable any person to identify the voter who completed it; or
- (c) if it has not been completed in accordance with the directions on it.

**(3)** However, a ballot-paper is not to be rejected as informal:

- (a) merely because of any mark or writing on it which is not authorised or required by this Regulation (unless it is a mark or writing referred to in subclause (2) (b)) if the returning officer considers that 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) merely because the same preference (other than a first preference) has been recorded on the ballot-paper for more than one candidate; or
  - (ii) merely because there is a break in the order of preferences recorded on the ballot-paper

**Counting of votes**

**28. (1)** The method of counting the votes to ascertain the result of an election is as provided in Part 2 of the Seventh Schedule to the Constitution Act 1902.

**(2)** For the purpose of applying the provisions of that Part to an election, a reference in those provisions to the returning officer is to be read as a reference to the returning officer under this Regulation.

**Notification of result of election**

**29.** As soon as practicable after a candidate in an election has been elected, the returning officer is to notify the Minister and the Secretary in writing of the name of the candidate elected.

**PART 8—MISCELLANEOUS****Enrolment of nominees of joint, corporate and absentee landowners**

**30. (1)** In the case of land that is held:

- (a) jointly or in common or in any manner otherwise than by one person as owner; or
- (b) by a corporation; or
- (c) by a person who is not the actual occupier of the land,

the right to enrolment for an election in respect of the land must be exercised by a person nominated by the landowner or landowners concerned for the purposes of enrolment.

**(2)** The nominee must be a natural person who is not already enrolled for the election in some other capacity.

**Decisions of returning officer final**

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

**Death of candidate**

**32.** If a candidate dies after the close of nominations and before the close of the ballot:

- (a) the returning officer is to cause notice of the death to be published in the Gazette; and

- (b) all proceedings taken after the Minister notified the returning officer that the election was required to be held are of no effect and those proceedings must again be taken.

### **Offences**

**33.** A person must not:

- (a) vote, or attempt to vote, more than once in an election; or  
(b) vote, or attempt to vote, in an election in which the person is not entitled to vote.

Maximum penalty: 5 penalty units.

### **Transitional**

**34.** If anything done under the Dried Fruits Regulations still has effect immediately before this Regulation commences, and if that thing could have been done under a corresponding provision of this Regulation had it been in force when that thing was done, the thing continues to have effect as if it had been done under the corresponding provision of this Regulation.

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SCHEDULE 1—FORMS

Form 1

(Cl. 8)

NOMINATION OF CANDIDATE

(DRIED FRUITS ACT 1939)

We hereby nominate .....  
(name in full)

of .....  
(postal address)

as a candidate for the following election .....  
.....  
.....  
(specify the election to which the nomination relates)

We declare that we are each entitled to vote in the election.

<i>Name in full</i>	<i>Address</i>	<i>Signature</i>
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

NOTE: This nomination must be completed by not less than 2 persons (other than the candidate), each of whom is qualified to vote in the election.

I, .....  
hereby consent to being a candidate for the election to which this nomination relates.

Postal address: .....

Postcode: ..... Telephone No.: .....

Date of birth: .....

Dated: ..... Signed: .....

\_\_\_\_\_

Form 2

(Cl. 12)

STATUTORY DECLARATION

(DRIED FRUITS ACT 1939)

I, ..... of ..... do solemnly and sincerely declare that:

1. My full name is: .....

2. My residential address is: ..... Postcode: .....

3. My date of birth is: .....

4. I am self-employed\*/employed by\*: ..... as: ..... (specify nature of employment)

5. I hold the following qualifications (academic/trade/professional): .....

6. I am a member of the following organisations: .....

7. I hold the following offices (other than employment): .....

8. .... (See note)

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Oaths Act 1900.

Declared at ..... this ..... day of ..... 19 .....

..... (Signature)

before me:

..... (Justice of the Peace)

NOTE: A candidate may include further information relating to the candidacy. The information should not exceed 4 lines of typescript.

\* (Delete whichever is inapplicable)

\_\_\_\_\_

**Form 3**

(Cl. 13)

**CERTIFICATE**

(DRIED FRUITS ACT 1939)

I certify that this roll of growers contains the names (consecutively numbered and listed in alphabetical order) and addresses of those growers considered by me to be entitled to vote in the election in relation to which this roll has been prepared.

The first and last entries in the roll are as follows:

First entry: No.: ..... Name: .....

Address: .....

Last entry: No.: ..... Name: .....

Address: .....

Dated: ..... Signed: .....

**Form 4**

(Cl. 17)

**APPLICATION FOR ENROLMENT**

(DRIED FRUITS ACT 1939)

Surname: .....

Given names: .....

Postal address: .....

Postcode: ..... Telephone No.: .....

Address of property where dried fruit is produced: .....

.....

Council area in which the property is situated: .....

.....

I hereby apply for enrolment on the roll of growers for Division ..... Part ..... :

- (a) \* as a sole grower; or
- (b) \* as the representative of the owners of land held jointly or in common or in any manner otherwise than by one person as owner; or
- (c) \* as the representative of a corporation; or
- (d) \* as the representative of a person who is not the actual occupier of the land concerned.



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Particulars of person or persons for whom I am a representative are as follows:

Name: .....

Postal address: .....

..... Postcode: .....

I declare that I am\*/the person I represent is\* entitled to enrolment in accordance with section 5 of the Dried Fruits Act 1939 and clauses 7 and 30 of the Dried Fruits (Elections) Regulation 1993.

I further declare that, to the best of my knowledge, the information contained in this application is true.

Dated: ..... Signed: .....

\* (*Delete whichever is inapplicable*)

**Form 5**

(Cl. 18)

**OBJECTION TO ENROLMENT**

(DRIED FRUITS ACT 1939)

I hereby object to the inclusion in the final roll for the following election: .....

.....  
*(specify the election to which the objection relates)*

of the name of: .....  
*(name in full)*

of .....  
*(address)*

This objection is based on the following grounds:

.....  
.....  
*(specify the grounds of the objection)*

Name of objector: .....

Postal address: .....

Postcode: ..... Telephone No.: .....

Dated: ..... Signed: .....

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SCHEDULE 1 —FORMS

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**EXPLANATORY NOTE**

The object of this Regulation is to remake the provisions of the repealed Dried Fruits Regulations relating to the election of members of the Dried Fruits Board. The new Regulation makes provision with respect to the following matters:

- (a) the calling of elections (Part 2);
- (b) nominations for elections (Part 3);
- (c) the calling of ballots, where ballots are required to be held (Part 4);
- (d) the preparation of electoral rolls (Part 5);
- (e) the conduct of ballots (Part 6);
- (f) the scrutiny of votes in a ballot (Part 7);
- (g) other matters of a minor, consequential or ancillary nature (Parts 1 and 8).

This Regulation is made under the Dried Fruits Act 1939, including section 39 (the general regulation making power) and section 6 (relating to elections).

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

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