

**PORTS CORPORATISATION AND WATERWAYS  
MANAGEMENT ACT 1995—REGULATION**

(Ports Corporatisation (Staff Director Elections) Regulation 1995)

NEW SOUTH WALES



*[Published in Gazette No. 92 of 28 July 1995]*

HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Ports Corporatisation and Waterways Management Act 1995, has been pleased to make the Regulation set forth hereunder.

PATRICK CARL SCULLY, M.P.,  
Minister for Ports.

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**PART 1—PRELIMINARY**

**Citation**

1. This Regulation may be cited as the Ports Corporatisation (Staff Director Elections) Regulation 1995.

**Definitions**

2. (1) In this Regulation:

“**Chief Executive Officer**” means the Chief Executive Officer of a Port Corporation or a person acting in that capacity;

“**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 of a person to hold office as a staff director referred to in section 18 of the Act;

**“employee”** means any member of the staff of the relevant Port Corporation, but does not include a person who is employed on a temporary or casual basis;

**“Port Corporation”** means the Newcastle Port Corporation, the Port Kembla Port Corporation or the Sydney Ports Corporation;

**“the Act”** means the Ports Corporatisation and Waterways Management Act 1995.

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

#### **Returning Officer—delegation**

3. The returning officer for the purposes of an election under this Regulation, as referred to in section 18 (5) of the Act, 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 ELECTION**

#### **Notice of election**

4. (1) As soon as practicable after being notified by the Minister that an election is required to be held, the returning officer:

- (a) must cause to be published in the Gazette, and in at least 1 daily newspaper circulating throughout New South Wales, a notice of the election; and
- (b) must notify the Chief Executive Officer in writing that an election is to be held and of the times and dates for the close of nominations and the close of the ballot, 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 times and dates for the close of nominations and the close of the ballot; and
- (d) must state the places where nominations may be lodged.

(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.

(4) The close of the ballot is to be not earlier than 28 days after the close of nominations.

#### **Extension of time**

5. (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 or the close of the ballot.

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

### **PART 3—NOMINATIONS**

#### **Nomination of candidates**

6. (1) A nomination of a candidate:

- (a) must be in Form 1 ; and
- (b) must contain a statement, signed by the candidate, consenting to the nomination; and
- (c) must be lodged with the returning officer before the close of nominations.

(2) A nomination must contain the full name, residential address and signature of each person by whom the nomination is made.

(3) The returning officer must reject any nomination received by the returning officer after the close of nominations.

#### **Withdrawal of nomination**

7. 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 election**

8. If, by the close of nominations, 1 person only has been duly nominated as a candidate, that person is elected.

**Contested election**

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

**Candidate information sheet**

10. (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 is to draw up a candidate information sheet consisting of the information in the statutory declarations submitted by 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—THE BALLOT****Electoral roll**

11. (1) As soon as practicable after it becomes apparent that a ballot must be held for an election, the returning officer must notify the Chief Executive Officer:

- (a) that a ballot is to be held for the election; and
- (b) that an electoral roll for the election is required.

(2) The Chief Executive Officer must provide the returning officer with:

- (a) a roll containing the full names (consecutively numbered and listed in alphabetical order) and residential addresses of all of the employees of the relevant Port Corporation; and
- (b) an appropriately addressed label, or an appropriately addressed envelope, for each person whose name is included in that roll.

(3) The electoral roll must be certified by the Chief Executive Officer 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 an electoral roll for the earlier election has already been provided to the returning officer.

### **Printing of ballot-papers**

12. (1) If a ballot is to be held, 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 so that a ballot-paper can be sent to each employee of the relevant Pot Corporation; and
- (c) if a candidate information sheet has been drawn up, must cause sufficient copies of it to be printed so that a copy can be sent to each employee of the relevant Pot Corporation.

(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 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 and returned to the returning officer 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 1 candidate by placing the number "1" in the square opposite the name of the candidate indicating the voter's first preference; and

- (b) that the voter may, but is not required to, vote for additional candidates by placing consecutive numbers (beginning with the number “2”) in the squares opposite the names of the additional candidates, indicating 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, send to each employee of the relevant Port Corporation:

- (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 as an official mark 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**

14. (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 spoiled, 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 vote**

15. In order to vote at an election, a voter:

- (a) must record a vote on the ballot-paper in accordance with the 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 5—THE SCRUTINY**

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

**16. (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:

- (a) must accept the ballot-paper in the envelope, if satisfied that a person of that name is an employee of the relevant Port Corporation; 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 ballot**

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

### **Scrutineers**

**18. (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**

**19. (1)** The scrutiny of votes 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 a person authorised by the returning officer) nor bears a mark prescribed as an official mark for the purpose 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 shown 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; or



- (c) merely because the voter has recorded a vote by placing a cross or a tick in a square and not placing any mark or writing in any other square, but the ballot-paper is to be treated as if the cross or tick were the number “1”.

### **Counting the votes**

**28.** (1) The method of counting the votes is to be as set out in Part 2 of the Seventh Schedule to the Constitution Act 1902.

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

### **Notification of result of election**

**21.** As soon as practicable after the votes have been counted, the returning officer:

- (a) must notify the Minister in writing of the name of the candidate elected; and
- (b) must cause notice of the election of the candidate to be published in the Gazette.

## **PART 6—MISCELLANEOUS**

### **Returning officer's decision final**

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

### **Death of candidate**

**23.** 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**

**24.** 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: 10 penalty units.

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**SCHEDULE 1—FORMS**

(Cl. 2 (2))

**Form 1**

**NOMINATION OF CANDIDATE**

(PORTS CORPORATISATION AND WATERWAYS MANAGEMENT ACT 1995)

We 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 employees of the relevant Port Corporation.

Name in full	Address	Signature
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

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CONSENT TO NOMINATION

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

.....  
(Signature)

.....  
(Date)

**Form 2**

**CANDIDATE INFORMATION SHEET**

(PORTS CORPORATISATION AND WATERWAYS MANAGEMENT ACT 1995)

I, ..... of .....

1. My date of birth is .....

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

.....

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

.....

4. I am employed by: .....

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

..... 6. ....

.....

.....

..... (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 .....,  
before me: ..... (Signature)  
.....  
Justice of the Peace

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

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**Form 3**

**ROLL OF ELECTORS**

(PORTS CORPORATISATION AND WATERWAYS MANAGEMENT ACT 1995)

I certify that this roll contains the full names (consecutively numbered and listed in alphabetical order) and addresses of all of the employees of the relevant Port Corporation.

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

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

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

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

.....  
 Chief Executive Officer

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**SCHEDULE 1—FORMS**

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**EXPLANATORY NOTE**

The object of this Regulation is to set out the procedures for the election of a person by the staff of the Newcastle Port Corporation, Port Kembla Port Corporation or Sydney Ports Corporation to the board of directors of the appropriate corporation.

The Regulation generally follows other regulations for the election of staff representatives. Certain procedures are adopted from the Parliamentary Electorates and Elections Act 1912, and the actual count procedure is the one set out in the Constitution Act 1902 for the election of members of the Legislative Assembly (optional preferential system).

The Regulation is made under the Ports Corporatisation and Waterways Management Act 1995, including sections 18 (referring to elections) and 110 (Regulations).

The Regulation relates to matters of a machinery nature and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

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