

1995—No. 376

**COMMERCIAL AGENTS AND PRIVATE INQUIRY AGENTS
ACT 1963—REGULATION**

(Commercial Agents and Private Inquiry Agents Regulation 1995)

NEW SOUTH WALES



[Published in Gazette No. 102 of 25 August 1995]

HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Commercial Agents and Private Inquiry Agents Act 1963, has been pleased to make the Regulation set forth hereunder.

PAUL WHELAN MP
Minister for Police.

PART 1—PRELIMINARY

Citation

1. This Regulation may be cited as the Commercial Agents and Private Inquiry Agents Regulation 1995.

Commencement

2. This Regulation commences on 1 September 1995.

Definitions

3. (1) In this Regulation:

“agent” means a commercial agent or a private inquiry agent;

“the Act” means the Commercial Agents and Private Inquiry Agents Act 1963.

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

(b) an election for the purposes of electing a deputy in accordance with section 6 (2) of the Act;

“open election” means an election for the purposes of electing an elected member of the board who is an architect;

“restricted election” means an election for the purposes of electing one or more elected members of the board who are chartered architects;

“returning officer” means:

- (a) the Electoral Commissioner for New South Wales; or
- (b) a person employed in the office of and nominated by the Electoral Commissioner for the purpose of exercising the functions conferred or imposed on a returning officer by this Regulation;

“roll” for an election means the roll provided to the returning officer under clause 14;

“the Act” means the Architects Act 1921.

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

PART 2—ELECTIONS

Division 1—Calling of the election

Prescribed manner of election: sec. 5 (1) (b)

4. For the purposes of section 5 (1) (b) of the Act, the prescribed manner in which architects are to be elected as members of the board is the manner set out in this Part.

Notice of election

5. (1) As soon as possible after having been notified in writing by or on behalf of the Minister that one or more members of the board are required to be elected, the returning officer must cause notice of that fact:

- (a) to be sent to the registrar; and
- (b) to be published in a newspaper circulating generally throughout the State.

(2) The notice to be published in the newspaper:

- (a) must state that an election is to be held; and
- (b) must specify whether the election is an open election or a restricted election or whether an open election and restricted election are to be held simultaneously; and

- (c) must specify the number of members required to be elected (and how many of them are required to be chartered architects); and
- (d) must call for nominations of candidates; and
- (e) must specify the time and date for the close of nominations; and
- (f) must advise where nomination forms may be obtained and where nominations may be lodged.

(3) The date fixed for the close of nominations must not be earlier than 21 days, or later than 28 days, after the date on which the notice is published.

Postponement of close of nominations

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

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

Division 2—Nominations

Qualifications for nominating candidates

7. A person is qualified to nominate a candidate for election as an elected member of the Board if the person is an architect as at the close of nominations.

Eligibility for nomination

8. (1) A person is eligible for nomination as a candidate at an open election if the person is an architect as at the close of nominations.

(2) A person is eligible for nomination as a candidate at a restricted election if the person is a chartered architect as at the close of nominations.

Nomination of candidates

9. (1) A nomination of a candidate:

- (a) must be in Form 1; and
- (b) must be made by at least 5 persons (other than the candidate) who are qualified to nominate a candidate; and
- (c) must be lodged with the returning officer before the close of nominations.

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

(3) For the purpose of enabling the returning officer to form an opinion:

- (a) as to whether a person by whom a candidate in an election has been nominated is qualified to nominate a candidate; or
- (b) as to whether a person who has been nominated is eligible for nomination,

the returning officer may require the registrar to furnish the returning officer with such information regarding the person as the returning officer may specify.

(4) A candidate who has been nominated in an election may withdraw the nomination at any time before the close of nominations by notice in writing addressed to the returning officer.

Uncontested elections

10. If the number of persons who have been duly nominated as candidates for an election by the close of nominations does not exceed the number of persons to be elected, each of those persons is taken to have been elected.

Contested elections

11. If the number of persons who have been duly nominated as candidates for an election by the close of nominations exceeds the number of persons to be elected, a ballot must be held.

Candidate information sheets

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

(2) If more than the required number of persons have been nominated as candidates by the close of nominations, the returning officer must draw up a candidate information sheet consisting of the information contained in the statutory declarations submitted by the candidates.

(3) In drawing up a candidate information sheet, the returning officer may omit (or, with the consent of the candidate, correct) 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.

(4) If a candidate does not submit a statutory declaration to the returning officer, the returning officer may, in drawing up a candidate information sheet, include in the sheet in respect of the candidate the words “NO INFORMATION RECEIVED”.

(5) The names of the candidates must be listed on the candidate information sheet in the same order as they are listed on the ballot-paper for the election.

Division 3—Calling of the ballot

Qualifications for voting

13. For the purposes of section 5 (1) (b) of the Act, a person who is an architect at the close of nominations is a prescribed person and is therefore qualified to vote in an election.

Roll for the election

14. (1) As soon as practicable after it becomes apparent to the returning officer that a ballot is required to be held in respect of an election, the returning officer must cause notice of that fact to be sent to the registrar.

- (2) The registrar must provide the returning officer with:
 - (a) a roll consisting of a list of all architects as at the date of close of nominations; and
 - (b) an appropriately addressed label or an appropriately addressed envelope for each person whose name is included in that roll.
- (3) The roll:
 - (a) must contain the 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 registrar in accordance with Form 3.

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

Notice of ballot

15. (1) As soon as practicable after receiving the roll for the election, the returning officer must cause notice that a ballot is to be held to be published in a newspaper circulating generally throughout the electoral district.

(2) The notice:

- (a) must state that a ballot is to be taken; and
- (b) must state whether the ballot is in respect of an open election or a restricted election or whether it is in respect of an open election and restricted election held simultaneously; and
- (c) must fix a time and date for the close of the ballot.

(3) The close of the ballot must be not earlier than 28 days after the notice is published.

Postponement of ballot

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

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

Division 4—The ballot**Printing of ballot-papers**

17. (1) AS soon as practicable after the close of nominations in an election, the returning officer:

- (a) must 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) must cause sufficient ballot-papers to be printed to enable a ballot-paper to be sent to each person included in the roll for the election; and
 - (c) if a candidate information sheet has been drawn up, must cause sufficient copies to be printed so that a copy may be sent to each person included in that roll.
- (2)** A 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 set opposite each name; and

- (b) if the returning officer considers that the names of 2 or more of the 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 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 the number of candidates to be elected by placing consecutive numbers (beginning with the number “1” and ending with the number equal to the number of candidates to be elected) in the squares set opposite the candidates’ names in the order of the voter’s preferences for them; and
 - (b) the voter may, but is not required to, vote for additional candidates by placing consecutive numbers (beginning with the number next higher than the number of candidates to be elected) in the square set opposite the candidates’ names in the order of the voter’s preferences for them.

Distribution of ballot-papers

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

- (a) a ballot-paper 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 reply-paid 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 a name, address and signature; and
- (c) if applicable, a candidate information sheet.

Duplicate ballot-papers

19. (1) At any time before the close of the ballot, the returning officer may 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 must maintain a record of all duplicate ballot-papers issued under this clause.

Recording of votes

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

- (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.

Division 5—The scrutiny

Receipt of ballot-papers

21. (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 the 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 in an envelope 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

22. The result of a ballot must be ascertained by the returning officer as soon as practicable after the close of the ballot.

Scrutineers

23. Each candidate in a ballot is entitled to appoint, by notice in writing, a scrutineer to represent the candidate at all stages of the scrutiny.

Scrutiny of votes

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

- (a) the returning officer must produce unopened the envelopes containing the ballot-papers accepted for scrutiny;
- (b) the returning officer must then 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 so opened have been placed in the ballot-box, the returning officer must then unlock the ballot-box and remove the ballot-papers;
- (d) the returning officer must then examine each ballot-paper and reject those that are informal;
- (e) the returning officer must then proceed to count the votes and ascertain the result of the election.

(2) 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 by a person authorised by the returning officer in that behalf) 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 the returning officer considers could 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.

(3) A ballot-paper must not be rejected as informal:

- (a) merely because there is any mark or writing on it that is not authorised or required by this Regulation (not being a mark or writing referred to in subclause (2) (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 one 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

- 25. (1)** If there is only one person to be elected in any election:
- (a) the method of counting the votes so as to ascertain the result of the election is as provided in Part 2 of the Seventh Schedule to the Constitution Act 1902; and
 - (b) for the purpose of applying the provisions of that Part to any such election, a reference in those provisions to the returning officer is to be read as a reference to the returning officer under this Regulation.
- (2)** If there are 2 or more persons to be elected in any election:
- (a) the method of counting the votes so as to ascertain the result of the election is as provided in Part 2 of the Sixth Schedule to the Constitution Act 1902; and
 - (b) for the purpose of applying the provisions of that Part to any such election:
 - (i) a reference in those provisions to the Council returning officer is to be read as a reference to the returning officer under this Regulation; and
 - (ii) the quota referred to in those provisions is to be determined by dividing the number of first preference votes for all candidates by one more than the number of persons to be elected and by increasing the quotient so obtained (disregarding any remainder) by one.

Notice of result of election

26. As soon as practicable after a candidate in an election has been elected, the returning officer must notify the Minister, in writing, of the name of the candidate or candidates elected.

Division 6—General

Decisions of returning officer final

27. 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 in any election, the decision of the returning officer on that matter is final.

Death of a candidate

28. 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 must be taken again.

Offences

29. A person must not:

- (a) vote, or attempt to vote, more than once in any election; or
- (b) vote, or attempt to vote, in any election in which the person is not entitled to vote; or
- (c) make a false or wilfully misleading statement (not being a statement verified by statutory declaration):
 - (i) to the returning officer in connection with any election; or
 - (ii) in any document that the person furnishes for the purposes of any election.

Maximum penalty: 2 penalty units.

PART 3—MISCELLANEOUS**Prescribed manner of appointment: sec. 5 (1) (c) (i)**

30. (1) For the purposes of section 5 (1) (c) (i) of the Act, the prescribed manner in which the 2 architects are to be appointed as appointed members of the board is by:

the Senate of the University of Sydney or the Council of the University of New South Wales (whichever did not previously appoint a member under this paragraph) appointing a qualified person as one of those members; and

the Council of the University of Technology, Sydney, or the Council of the University of Newcastle (whichever did not previously appoint a member under this paragraph) appointing a qualified person as the other of those members.

(2) The first appointments to be made after the commencement of this Regulation are to be made by the Council of the University of New South Wales (under subclause (1) (a)) and the Council of the University of Newcastle (under subclause (1) (b)).

(3) In this clause, “qualified person”, in relation to a prescribed institution, means an architect who is engaged in the teaching of architecture at that institution and who is a Professor or Associate Professor of the institution.

Amendment

31. (1) The Architects Regulation 1983 is amended by omitting Part 5 and Forms 3, 4 and 5 in Schedule 1.

(2) Any act, matter or thing which, immediately before the amendment of the Architects Regulation 1983, had effect under that Part or those Forms in that Schedule continues to have effect under this Regulation.

SCHEDULE 1—FORMS

Form 1

(C1.9)

NOMINATION OF CANDIDATE
(Architects (Elections and Appointments) Regulation 1995)

We nominate
(name in full)
of
(residential address)
being a
(specify whether candidate is a chartered or non-chartered architect)
who is*/is not* carrying on the business of an architect at.....
.....
(specify place or places at which candidate is carrying on business)
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.

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

.....
.....
.....
NOTE: This nomination must be completed by not less than 5 persons (other than the candidate), each of whom is an architect.

I.....
consent to being a candidate at the election to which this nomination relates.
Postal address:
Postcode:..... Telephone No.....
Date of birth:
Dated:
Signed:
Delete whichever is inapplicable.

Form 2

(Cl. 12)

STATUTORY DECLARATION
(Architects (Elections and Appointments) Regulation 1995)

I,..... of.....
do solemnly and sincerely declare that:
1. My full name is.....
2. My residential address is.....
..... Postcode:.....
My date of birth is
4. I am practising on my own account and my place of business is *

OR

I am employed by *
(specify name of employer)
of.....
(specify address of employer)

OR

I am a partner in*/director of* *
(specify name of firm or company)
of.....
(specify address of firm or company)

1995—No. 370

- 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.....,
 Before me:

 Justice of the Peace

 (*signature*)

NOTE: A candidate may include further information relating to the candidacy. Such information should not exceed 4 lines of typescript.
 * *Delete whichever is inapplicable.*

Form 3

(Cl. 14)

CERTIFICATE
 (Architects (Elections and Appointments) Regulation 1995)

I certify that this roll contains the names (consecutively numbered and listed in alphabetical order) and addresses of those architects whose names were on the register as at, being the date of the close of nominations for 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:.....

NOTES

TABLE OF PROVISIONS

PART 1—PRELIMINARY

- 1. Citation
- 2. Commencement
- 3. Definitions

PART 2—ELECTIONS

Division 1—Calling of the election

- 4. Prescribed manner of election: sec. 5 (1) (b)
- 5. Notice of election
- 6. Postponement of close of nominations

Division 2—Nominations

- 7. Qualifications for nominating candidates
- 8. Eligibility for nomination
- 9. Nomination of candidates
- 10. Uncontested elections
- 11. Contested elections
- 12. Candidate information sheets

Division 3—Calling of the ballot

- 13. Qualifications for voting
- 14. Roll for the election
- 15. Notice of ballot
- 16. Postponement of ballot

Division 4—The ballot

- 17. Printing of ballot-papers
- 18. Distribution of ballot-papers
- 19. Duplicate ballot-papers
- 20. Recording of votes

Division 5—The scrutiny

- 21. Receipt of ballot-papers
- 22. Ascertaining result of ballot
- 23. Scrutineers
- 24. Scrutiny of votes
- 25. Counting of votes

1995—No. 370

26. Notice of result of election

Division 6—General

27. Decisions of returning officer final

28. Death of a candidate

29. Offences

PART 3—MISCELLANEOUS

30. Prescribed manner of appointment: sec. 5 (1) (c) (i)

31. Amendment

SCHEDULE 1—FORMS

EXPLANATORY NOTE

The object of this Regulation is to remake the provisions of the Architects Regulation 1983 that deal with the appointment or election of members of the Board of Architects of New South Wales. The new Regulation deals with the following matters:

- (a) the elections of members of the board and of deputies of such members (clauses 4–29);
- (b) the appointment of members of the board by relevant universities (clause 30);
- (c) other minor, consequential and ancillary matters (clauses 1–3 and 31).

This Regulation is made under the Architects Act 1921, including section 25 (the general regulation making power) and sections 5 (1) and 6 (2).

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

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