

1995—No. 452

AREA HEALTH SERVICES ACT 1986—REGULATION

(Area Health Services (Elected Staff Member) Regulation 1995)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Area Health Services Act 1986, has ken pleased to make the Regulation set forth hereunder.

ANDREW REFSHAUGE,
Minister for Health.

PART 1—PRELIMINARY

Citation

1. This Regulation may be cited as the Area Health Services (Elected Staff Member) Regulation 1995.

Commencement

2. This Regulation commences on 1 September 1995.

Application

3. This Regulation applies to the election of a person to hold office as the elected staff member of an area health board.

Definitions

4. In this Regulation:

“casual employee” of an area health service means an employee of the service who is employed on a casual basis, but does not include a person employed full-time or part-time (whether for a limited term or otherwise);

“close of nominations” means the time and date for the close of nominations for an election which have been fixed under this Regulation by the notice of the election or, if that close has been postponed, the time and date to which that close has been postponed;

“close of the ballot” means the time and date for the close of any ballot for an election which have been fixed under this Regulation by the notice of the election or, if that close has been postponed, the time and date to which that close has been postponed;

“the Act” means the Area Health Services Act 1986.

PART 2—ADMINISTRATION OF ELECTIONS

Delegation by returning officer

5. The returning officer may delegate any of the returning officer’s functions under this Regulation to any member of staff of the Electoral Commissioner of New South Wales, or of an area health service in respect of which an election is conducted.

Decision of returning officer final

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

Costs of election

7. The costs of conducting an election are to be paid by the relevant area health service. The costs of the Electoral Commissioner of New South Wales in conducting the election are recoverable from the service as a debt owed to the Electoral Commissioner.

Casual employees to enrol

8. (1) A person who is a casual employee of an area health service may apply in writing to the chief executive officer of the service to be included on the roll for an election.

(2) The chief executive officer must include the person on the roll if the application is received by the officer between the first publication of notice of the election (in a daily newspaper circulating generally in New South Wales) and the close of nominations and the person is still an employee of the service at the close of nominations.

PART 3—PRE-BALLOT PROCEDURE**Notice of election**

9. (1) The returning officer must publish written notice of an election as soon as practicable after being informed in writing by the Minister that an election is to be held.

(2) The minimum requirement is that the notice be published in the Gazette and in a daily newspaper circulating generally in New South Wales.

(3) The notice is to:

- (a) state that an election is to be held; and
- (b) invite nominations of candidates; and
- (c) fix the time and date for the close of nominations; and
- (d) fix the time and date for the determination of the order of the candidates on the ballot-papers; and
- (e) fix the time and date for the close of the ballot; and
- (f) advise that casual employees must apply for enrolment if they wish to vote, and advise them how to apply.

(4) The close of nominations is to be not less than 21 days nor more than 28 days after the date when the notice of the election is first published in a daily newspaper circulating generally in New South Wales.

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

Extension of closing times

10. (1) The returning officer may, if of the opinion that an election would otherwise fail, fix later times and dates instead of those previously fixed.

(2) The times and dates, and the publication of notice of them, must be in accordance with clause 9 (2)–(5).

(3) A new date must not be more than 14 days after the corresponding date that was previously fixed.

(4) The returning officer may exercise the power conferred by this clause more than once in respect of an election.

Notification of chief executive officer

11. The returning officer must notify the chief executive officer of the relevant area health board in writing that an election is to be held. The returning officer must also notify that officer in writing of the times and dates fixed for the close of nominations, for the determination of the order of candidates and for the close of the ballot (including any later times and dates).

Nomination

12. (1) For a nomination for election to be valid:

- (a) it must be valid in terms of clause 2 (5) of Schedule 4 to the Act (that is, the employment criteria in that subclause must be satisfied); and
- (b) the nomination must reach the returning officer at or before the close of nominations; and
- (c) the nomination must specify the full names and the residential addresses of the nominators and be signed by them; and
- (d) the nomination must include written consent to the nomination signed by the nominee.

(2) Once a valid nomination reaches the returning officer, the nominee becomes a candidate for election.

Withdrawal of nomination

13. A candidate may withdraw from an election by notice in writing that reaches the returning officer before the close of nominations.

Candidate information sheet

14. (1) A person who is nominated for election may set out in a statutory declaration addressed to the returning officer all or some of the following material for inclusion in a candidate information sheet:

- (a) the person's date of birth;
- (b) any academic and professional qualifications held by the person;
- (c) the names of any organisations to which the person belongs;
- (d) any offices that the person holds apart from those in which the person is employed by the relevant area health service;
- (e) up to 50 words of additional material relevant to the person's candidature.

(2) If there is to be a ballot, the returning officer is to prepare a candidate information sheet. The returning officer must base the information in that sheet on what has been set out in the statutory declarations received by the returning officer before the close of nominations.

(3) However, the returning officer may amend or omit some or all of that material to ensure that it is, in the returning officer's opinion, appropriate, not misleading and no longer than permitted under this clause.

Must there be a ballot?

15. (1) If, at the close of nominations, there is only one candidate, that candidate is elected. No ballot is then necessary.

(2) If, at the close of nominations, there is more than one candidate, a ballot is to be held.

Electoral roll

16. (1) If a ballot is to be held, the returning officer is to notify the chief executive officer of the relevant area health board of that fact.

(2) The chief executive officer is to deliver to the returning officer within the following 7 days:

- (a) a roll (in written or electronic form) that sets out (as at the close of nominations) the full name of each employee of the relevant area health service (other than any casual employee who has not duly applied for enrolment for the election) and the address to which that employee's ballot-paper is to be sent; and
- (b) a written label (or an electronic record enabling labels to be produced or envelopes to be addressed) for every name and address on the roll.

(3) The address is to be one nominated by the employee. However, if none has been nominated by the employee, the address is to be one nominated by the chief executive officer as the address at which the employee is usually employed (or the address of the employee's headquarters in the case of an employee who has more than one usual place of employment).

(4) The chief executive officer is to include in the roll a certificate signed by the officer to the effect that the roll complies with this clause.

(5) The returning officer is to allow an employee of the relevant area health service to inspect the roll without charge during the normal office hours of the returning officer.

PART 4—BALLOT

Type of ballot

17. A ballot in an election is to be a postal ballot.

Order of candidates on ballot-paper

18. (1) The returning officer is to determine the order of candidates on the ballot-papers for an election. That is to be done at the office of the returning officer at the time, and on the date, last fixed for the determination by notice of the election.

(2) The persons who are entitled to be present at the determination are the candidates (or their agents), the returning officer and any staff to whom any functions of the returning officer have been delegated.

(3) The determination is to be carried out in the following manner:

- (a) the returning officer must, in front of everyone present, make out in respect of each candidate a slip bearing the name under which the candidate has been nominated;
- (b) the officer must then enclose the slips in separate identical containers, securely seal each container and deposit all the containers in a securely fastened ballot-box;
- (c) the officer must then shake the ballot-box and turn it upside down several times, and allow anyone else present to do the same;
- (d) the officer must then open the ballot-box and take out and open each container one by one;
- (e) the officer must then announce to everyone present, and record, the name of the candidate whose name appears on the slip enclosed in the container first taken from the ballot-box and, in consecutive order, the name of the candidate whose name appears on the slip enclosed in the container next taken from the ballot-box, and so on until all the slips have been examined;
- (f) the officer must sign the record and allow anyone else present to do the same.

Form of ballot-paper

19. (1) The name of the candidate which has been first taken from the ballot-box in the determination of the order of names is to be shown closest to the top of the ballot-papers. The name of the candidate which has been next taken from the ballot-box is to be shown immediately below the name of the candidate which has been first taken and so on.

(2) The ballot-paper must contain:

- (a) the names of the candidates with a small square opposite each name; and
- (b) if, in the opinion of the returning officer, the names of 2 or more candidates are so similar as to cause confusion, such other matter as will, in the opinion of the returning officer, distinguish each of those candidates; and
- (c) the directions required by this clause as to the manner in which a vote is to be recorded on the ballot-paper; and
- (d) directions as to how the ballot-paper is to be returned to the returning officer.

(3) The ballot-paper may contain such other directions as the returning officer considers appropriate.

(4) The directions to electors must include directions to the effect that:

- (a) the elector 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 elector wishes to give his or her first preference; and
- (b) the elector may 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 elector’s preferences for them.

Distribution of ballot-papers

20. (1) The returning officer is to have the ballot-papers printed.

(2) The returning officer must send to each elector a ballot-paper initialled by the returning officer.

(3) The returning officer must send to each elector also:

- (a) an unsealed declaration envelope addressed to the returning officer and bearing on the back the words “Name and address of elector” and “Signature of elector”, together with appropriate spaces for the insertion of the name, address and signature; and
- (b) a copy of the candidate information sheet.

Duplicates

21. (1) The returning officer may, at any time before the close of the ballot, send or deliver to an elector a new ballot-paper if the elector satisfies the returning officer by statutory declaration:

- (a) that the elector's previous ballot-paper in the election has been spoiled, lost or destroyed; and
- (b) that the elector has not already voted at the election.

(2) The returning officer must maintain a record of all ballot-papers sent or delivered to electors under this clause.

(3) The returning officer may, at the request of an elector, send or deliver to the elector a duplicate of a declaration envelope or candidate information sheet.

Recording of vote

22. (1) An elector who wishes to vote is to:

- (a) record a vote on the ballot-paper sent or delivered to the elector, doing so in accordance with the directions shown on it; and
- (b) place the completed ballot-paper in the declaration envelope; and
- (c) seal the envelope; and
- (d) state his or her full name and full address on the back of the envelope and sign it; and
- (e) send or deliver the envelope (with its contents) to the returning officer so that it is received by the returning officer at or before the close of the ballot.

(2) The declaration envelope may be sent or delivered to the returning officer inside a further envelope supplied by the elector.

PART 5—SCRUTINY**Ascertaining result of ballot**

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

Examination of envelopes

24. (1) The returning officer must reject any declaration envelope that the officer receives after the close of the ballot or that is unsealed.

(2) The returning officer must examine the name on the back of a declaration envelope not rejected under subclause (1), and:

- (a) if satisfied that a person of that name is an elector, must accept the envelope without opening it; or
- (b) if not so satisfied, or if a name, address or signature does not appear on the back of the envelope, must reject the envelope.

(3) If it appears to the returning officer that the signature on the back of a declaration envelope is not the signature of the person whose name and address are there, the returning officer may make such inquiries as the returning officer thinks fit.

(4) If, after making those inquiries, the returning officer is satisfied that the signature is not the signature of that person, the officer must reject the envelope.

(5) If a declaration envelope is to be rejected, its contents must also be rejected and the returning officer must not open it.

Scrutineers

25. (1) Each candidate is entitled to appoint a scrutineer to represent the candidate in respect of a ballot. The appointment is to be by notice in writing sent or delivered to the returning officer.

(2) A scrutineer is entitled to be present at any proceeding in the election (for which the person who appointed the scrutineer is a candidate) from the opening of the unrejected declaration envelopes to the final sealing, endorsement and signing of the parcels of papers used in the election.

Scrutiny and count of votes

26. The returning officer is to take the following steps after examining the declaration envelopes:

- (a) produce the unrejected declaration envelopes, open each one and take out any ballot-paper inside;
- (b) place the ballot-papers and envelopes in separate piles or containers;
- (c) examine each ballot-paper and reject it if it is informal;
- (d) count the votes on the formal ballot-papers, and ascertain the result of the election, in accordance with Schedule 1;
- (e) declare the result of the election.

Formality

27. (1) A ballot-paper of an elector is informal if:

- (a) it has not been completed in accordance with the directions on it for the showing of preferences; or
- (b) it has not been initialled by the returning officer; or
- (c) it contains a mark or writing which, in the returning officer's opinion, would enable the elector to be identified.

(2) However, a ballot-paper is not informal just because of the existence of marks or writing on the paper that are not in accordance with the directions for its completion if, in the opinion of the returning officer, the elector's intention is clearly indicated on the ballot-paper.

(3) A ballot-paper that shows at least one preference is not informal just because a second or later preference has been repeated or omitted. However, a repeated preference cannot be counted and any preference after the repeated preference or after an omission cannot be counted,

(4) If there are only 2 candidates, a tick or a cross in one square on a ballot-paper is to be treated as if it were the number "1" as long as the other square is blank.

Notification of result of election

28. (1) The returning officer is to give written notice of the result of an election to:

- (a) the Minister; and
- (b) the chief executive officer of the relevant area health board.

(2) The returning officer is to publish notice of the result of the election in the Gazette.

PART 6—MISCELLANEOUS**Voting not compulsory**

29. Voting is not compulsory.

Death of candidate

30. If a candidate for election dies after the close of nominations and before the close of the ballot, the election fails.

[**Note:** Clause 2 (8) of Schedule 4 to the Act provides that the Minister may appoint a person if an election fails.]

Validity of election

31. An election is not invalid just because there was a formal defect or error in or relating to the election, if the election was held substantially in accordance with this Regulation.

Security of election materials

32. (1) After the result of an election has been declared, the returning officer is to make a parcel of the papers used in the election. If, however, there was a ballot, the officer is to make two parcels: one parcel containing the marked and unmarked ballot-papers, together with the copies of the roll that were actually used, and the other parcel containing the other papers used in the election.

(2) The returning officer is to seal, endorse and sign each parcel, and to allow any scrutineers, candidates, or agents of candidates, who are present to do the same to each parcel.

(3) The Electoral Commissioner of New South Wales is to have each parcel kept securely for 12 months, and then have it destroyed.

Offences

33. (1) A person must not vote or attempt to vote more than once in the same capacity in an election.

(2) A person must not vote or attempt to vote in an election in which the person is not entitled to vote.

(3) A person must not, in relation to an election, make a statement which the person knows is false or misleading in a material particular to, or in a document sent or delivered to, the returning officer or any other person exercising functions under this Regulation.

Maximum penalty: 5 penalty units.

Repeal

34. (1) The Area Health Services (Elected Staff Member) Regulation 1986 is repealed.

(2) Any act, matter or thing that was done for the purposes of, or immediately before that repeal had effect under, that Regulation is taken to have been done for the purposes of, or to have effect under, this Regulation.

SCHEDULE 1—COUNTING OF VOTES

(Cl. 26)

Definitions

1. In this Schedule:

“absolute majority of votes” means a number greater than one-half of the total number of ballot-papers other than informal and exhausted ballot-papers;

“continuing candidate” means a candidate not already elected or excluded from the count;

“exhausted ballot-paper” is defined in clause 3 (2) of this Schedule;

“unrejected ballot-papers” means all ballot-papers not rejected as informal.

Counting and distributing

2. If only one candidate is to be elected, the votes are to be counted and the result of the election ascertained by the returning officer, or under the officer’s supervision, as follows:

- (a) The unrejected ballot-papers are arranged under the names of the candidates by placing in a separate parcel all those on which a first preference is indicated for the same candidate.
- (b) The total number of first preferences given for each candidate is then counted.
- (c) The candidate who has received the largest number of first preference votes is declared elected if that number constitutes an absolute majority of votes.
- (d) If no candidate has received an absolute majority of first preference votes, a second count is made.
- (e) On the second count the candidate who has received the fewest first preference votes is excluded, and each unexhausted ballot-paper counted to that candidate is counted to the candidate next in the order of the elector’s preference.
- (f) If a candidate then has an absolute majority of votes, the candidate is declared elected, but if no candidate then has an absolute majority of votes, the process of excluding the candidate who has the fewest votes and counting each of that candidate’s unexhausted ballot-papers to the continuing candidate next in the order of the elector’s preference is repeated until one candidate has received an absolute majority of votes.
- (g) The candidate who has received an absolute majority of votes is declared elected.

Exhausted ballot-papers

3. (1) In the process of counting under clause 2 of this Schedule, exhausted ballot-papers are set aside as finally dealt with and are not then taken into account.

(2) When a candidate is excluded, each ballot-paper counted to him or her is regarded as exhausted if there is not indicated upon it a next preference for one continuing candidate.

1995—No. 452

(3) In this clause, “**next preference**” includes the first of the subsequent preferences marked on a ballot-paper which is not given to an excluded candidate. However, if there is a repetition or omission in the consecutive numbering of preferences marked on a ballot-paper (other than a repetition or omission which makes the ballot-paper informal), only those preferences preceding the repetition or omission can be taken into account.

Equality

4. (1) If, on any count at which the candidate with the fewest votes has to be excluded, 2 or more candidates have equal numbers of votes (and that number is lower than the number of votes that any other candidate has, or those candidates are the only continuing candidates):

- (a) the candidate who had the fewest votes at the last count before the equality occurred is excluded; or
- (b) if they had equal numbers of votes at all preceding counts, the candidate whose name is on a slip drawn in accordance with subclause (2) is excluded.

(2) For the purposes of subclause (1) (b), the returning officer writes the names of the candidates who have equal numbers of votes on similar slips of paper. The returning officer then folds the slips so as to prevent the names being seen, mixes them, and draws one slip at random.

End of counting

5. The process of counting each of the unexhausted ballot-papers of an excluded candidate to the continuing candidate next in the order of the elector’s preference is not repeated if there is only one continuing candidate. Instead, that continuing candidate is declared elected.

NOTES**TABLE OF PROVISIONS****PART 1—PRELIMINARY**

1. Citation
2. Commencement
3. Application
4. Definitions

PART 2—ADMINISTRATION OF ELECTIONS

5. Delegation by returning officer
6. Decision of returning officer final
7. Costs of election
8. Casual employees to enrol

PART 3—PRE-BALLOT PROCEDURE

9. Notice of election
10. Extension of closing times
11. Notification of chief executive officer
12. Nomination
13. Withdrawal of nomination
14. Candidate information sheet
15. Must there be a ballot?
16. Electoral roll

PART 4—BALLOT

17. Type of ballot
18. Order of candidates on ballot-paper
19. Form of ballot-paper
20. Distribution of ballot-papers
21. Duplicates
22. Recording of vote

PART 5—SCRUTINY

23. Ascertaining result of ballot
24. Examination of envelopes
25. Scrutineers
26. Scrutiny and count of votes
27. Formality
28. Notification of result of election

PART 6—MISCELLANEOUS

29. Voting not compulsory
30. Death of candidate
31. Validity of election
32. Security of election materials
33. Offences
34. Repeal

SCHEDULE 1—COUNTING OF VOTES

EXPLANATORY NOTE

The object of this Regulation is to repeal and remake the provisions of the Area Health Services (Elected Staff Member) Regulation 1986. Those provisions are substantially unchanged, but have been supplemented or revised in the light of more recent election provisions. Certain administrative matters (including the role of the returning officer and the recovery of the costs of elections) have been set out in detail according to those later precedents.

The new Regulation deals with the following matters:

- (a) administrative matters;
- (b) the calling of elections;
- (c) nominations;
- (d) ballots;
- (e) the scrutiny and count;
- (f) offences and other miscellaneous matters.

This Regulation is made under the Area Health Services Act 1986 and in particular section 38 (Regulations), and clause 2 (Elected staff member) of Schedule 4.

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

This Regulation relates to matters of a machinery nature.
