



New South Wales

Health Services Regulation 1998

under the
Health Services Act 1997

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Health Services Act 1997*.

ANDREW REFSHAUGE
Minister for Health

Explanatory note

The object of this Regulation is to make provision for the following matters:

- the election of staff members to boards of area health services and statutory health corporations,
- (b) the appointment of visiting practitioners,
- (c) the management of Samaritan Funds,
- (d) other matters of a minor, consequential or ancillary nature.

This Regulation comprises or 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.

This Regulation is made under the *Health Services Act 1997*, including sections 133 (3) and 140 (the general regulation-making power), in particular section 140 (2) and (3), and clause 2 (2) of Schedule 5.

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Clause 1 Health Services Regulation 1998

Part 1 Preliminary

Health Services Regulation 1998

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Health Services Regulation 1998*.

2 Commencement

This Regulation commences on 1 July 1998.

3 Definitions

In this Regulation:

casual employee of a public health organisation means an employee of the organisation 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).

clinical privileges has the same meaning as it has in section 105 (2) of the Act.

Note. Section 105 (2) of the Act defines *clinical privileges* to mean the kind of clinical work (subject to any restrictions) that the public health organisation determines a visiting practitioner is to be allowed to perform at any of its hospitals.

close of nominations means the time and date for the close of nominations for an election that 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 that 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.

Department means the Department of Health.

medical appointments advisory committee, in relation to a public health organisation, means a committee:

- (a) established by the board of the public health organisation, and
- (b) having the function of advising the board in relation to the appointment of persons as visiting practitioners to the public health organisation and the clinical privileges that should be allowed to those persons.

the Act means the *Health Services Act 1997*.

Note. Terms defined in the Dictionary at the end of the Act include **appoint, board** of a public health organisation, **chief executive officer** of a public health organisation, **Director-General** and **visiting practitioner**.

4 Notes

The explanatory note, table of contents and notes in the text of this Regulation do not form part of this Regulation.

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Clause 5 Health Services Regulation 1998

Part 2 Visiting practitioners

Part 2 Visiting practitioners

5 Advertising of available appointments as visiting practitioners

- (1) A board of a public health organisation that decides to make available an appointment as a visiting practitioner must advertise the availability of the appointment in at least one newspaper circulating generally in New South Wales. The board may, in addition, advertise the availability in other ways.
- (2) An application for appointment as a visiting practitioner is to be made in writing to the board of the public health organisation concerned and is to include:
 - (a) a statement setting out the clinical privileges sought by the applicant, and
 - (b) an authority for the medical appointments advisory committee of the public health organisation to obtain information as to the applicant's past performance as a medical practitioner or dentist, as the case may be.
- (3) On receipt of the application, the board is to refer the application to that committee for advice.
- (4) Subclauses (1)–(3) do not apply:
 - (a) to an appointment as a visiting practitioner that is to be held as part of the duties of a person who is to be or has been appointed to a teaching position at a tertiary institution, or
 - (b) to an appointment as a visiting practitioner that is to be held by a person for a period of not more than 3 months, or
 - (c) to any appointment as a visiting practitioner, to the extent that the Director-General determines that the provisions of those subclauses are not to apply.
- (5) A determination under subclause (4) (c):
 - (a) may be made in respect of a particular appointment or in respect of appointments of any specified kind or description, and
 - (b) must be made in writing, and

- (c) must not be made except on the recommendation of the medical appointments advisory committee of the public health organisation concerned and at the request of the board of the public health organisation.

6 Appointment and conditions to be in written agreement

- (1) A person is to be appointed as a visiting practitioner to a public health organisation by written agreement between the person and the public health organisation.
- (2) The written agreement must specify the conditions to which the appointment is subject, including the clinical privileges of the visiting practitioner.
- (3) However, subclause (2) does not require conditions prescribed by or under the Act to be included in the written agreement.

7 Term of appointment

- (1) The period for which a person may be appointed as a visiting practitioner is such period (not exceeding 5 years) as the board of the public health organisation determines.
- (2) A person is, if otherwise qualified, eligible for re-appointment from time to time.
- (3) Despite subclause (1), a person may be appointed as a visiting practitioner for the duration of the person's appointment to a teaching position at a tertiary institution (or for such lesser period as the board may determine) if the board has first obtained the advice of the medical appointments advisory committee about the length of the appointment.

8 Resignation

- (1) A person may resign an appointment as a visiting practitioner by giving 3 months' written notice of resignation to the board of the public health organisation concerned.
- (2) However, a board of a public health organisation may waive that requirement for notice or accept a lesser period of time for the giving of such notice if, in the opinion of the board, it is reasonable to do so.

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Clause 9 Health Services Regulation 1998

Part 3 Elected staff members
Division 1

Part 3 Elected staff members

Division 1 Application of Part

9 Public health organisations to which Part applies

This Part applies to the following public health organisations only:

- (a) area health services,
- (b) statutory health corporations.

Note. Clause 2 of Schedule 5 to the Act provides for the election of an elected staff member to boards of area health services and statutory health organisations in accordance with the regulations.

Division 2 Administration of elections

10 Decision of returning officer final

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.

Note. Clause 2 (3) of Schedule 5 to the Act provides that the Electoral Commissioner (or a nominee of the Commissioner) is to be the returning officer for an election.

11 Costs of election

The costs of conducting an election are to be paid by the relevant public health organisation. The costs of the Electoral Commissioner of New South Wales in conducting the election are recoverable from the organisation as a debt owed to the Electoral Commissioner in a court of competent jurisdiction.

12 Casual employees to enrol

- (1) A person who is a casual employee of a public health organisation may apply in writing to the chief executive officer of the organisation 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 (as referred to in clause 13 (4)) and the close of nominations and the person is still an employee of the organisation at the close of nominations.

Division 3 Pre-ballot procedure

13 Notice of election

- (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.

14 Extension of closing times

- (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.

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Clause 14 Health Services Regulation 1998

Part 3 Elected staff members
Division 3

- (2) The times and dates, and the publication of notice of them, must be in accordance with clause 13 (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.

15 Notification of chief executive officer

The returning officer must notify the chief executive officer of the relevant 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).

16 Nomination

- (1) For a nomination for election to be effective:
 - (a) it must be valid in terms of clause 2 (5) of Schedule 5 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 an effective nomination reaches the returning officer, the nominee becomes a candidate for election.

17 Withdrawal of nomination

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

18 Candidate information sheet

- (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:

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- (a) the person's date of birth,
 - (b) any academic and professional qualifications held by the person,
 - (c) the names of any bodies to which the person belongs,
 - (d) any offices that the person holds apart from those in which the person is employed by the relevant public health organisation,
 - (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.

19 Must there be a ballot?

- (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.

20 Electoral roll

- (1) If a ballot is to be held, the returning officer is to notify the chief executive officer of the public health organisation 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 public health organisation (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

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Clause 20 Health Services Regulation 1998

Part 3 Elected staff members

Division 3

- (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 public health organisation to inspect the roll without charge during the normal office hours of the returning officer.

Division 4 Ballot

21 Type of ballot

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

22 Order of candidates on ballot-paper

- (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.

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- (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.

23 Form of ballot-paper

- (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.

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Clause 23 Health Services Regulation 1998

Part 3 Elected staff members
Division 4

- (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.

24 Distribution of ballot-papers

- (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.

25 Duplicates

- (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 spoilt, 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.

26 Recording of vote

- (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.

Division 5 Scrutiny

27 Ascertaining result of ballot

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

28 Examination of envelopes

- (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.

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Clause 28 Health Services Regulation 1998

Part 3 Elected staff members
Division 5

- (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.

29 Scrutineers

- (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.

30 Scrutiny and count of votes

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.

31 Formality

- (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

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- (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.

32 Notification of result of election

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

Division 6 General

33 Voting not compulsory

Voting is not compulsory.

34 Death of candidate

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 5 to the Act provides that the Minister may appoint a person if an election fails.

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Clause 34 Health Services Regulation 1998

Part 3 Elected staff members
Division 6

35 Validity of election

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.

36 Security of election materials

- (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 is to have each parcel kept securely for 12 months, and then have it destroyed.

37 Offences

- (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 (subclause (1)–(3)): 5 penalty units.

Part 4 Miscellaneous

38 Samaritan Funds

- (1) The Samaritan Fund of a public health organisation is to be kept as a separate account in its Special Purposes and Trust Fund.
- (2) The Minister may determine the manner in which the accounts for a Samaritan Fund are to be kept and the circumstances in which those accounts are to be audited.
- (3) Money is not to be withdrawn from the Samaritan Fund of a public health organisation except by, or with the written approval of, the chief executive officer (or person authorised in writing by the chief executive officer) of the public health organisation.
- (4) Money is not to be withdrawn from the Samaritan Fund of a public health organisation except for payment to, or for the purchase of items for, a necessitous patient or necessitous outgoing patient. The payment or purchase may be made only if it is essential to the well-being of the patient.
- (5) In this clause:

Samaritan Fund of a public health organisation means the Samaritan Fund of the organisation referred to in section 133 (2) of the Act.

Special Purposes and Trust Fund, in relation to a public health organisation, means the fund of that name established by the public health organisation.

39 Savings

- (1) Any act, matter or thing that, immediately before the commencement of section 138 of the Act, had effect under (or was done for the purposes of) a former regulation continues to have effect under (or is taken to have been done for the purposes of) this Regulation.

Note. Section 138 of the Act provides for the repeal of the *Area Health Services Act 1986* and *Public Hospitals Act 1929*.

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Clause 39 Health Services Regulation 1998

Part 4 Miscellaneous

- (2) In this clause, ***former regulation*** means any of the following:
- (a) *Area Health Services (Elected Staff Member) Regulation 1995,*
 - (b) *Area Health Services (Visiting Practitioners) Regulation 1995,*
 - (c) *Public Hospitals Regulation 1996.*

Schedule 1 Counting of votes

(Section 30 (d))

1 Definitions

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.

2 Counting and distributing

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.

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Schedule 1 Counting of votes

- (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.

3 Exhausted ballot-papers

- (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.
- (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.

4 Equality

- (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.

5 End of counting

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.