



Local Government (Elections) Amendment Regulation 2002

under the

Local Government Act 1993

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Local Government Act 1993*.

HARRY WOODS, M.P.,
Minister for Local Government

Explanatory note

The *Local Government Amendment Act 2000* made various amendments to the provisions of Chapter 10 of the *Local Government Act 1993* (which deals with elections). The system of parties or other groups of candidates submitting a group voting ticket for local government elections was abolished. Under the amended Act, a voter who records a vote for a party or other group “above the line” on the ballot-paper will be recording a vote for the candidates in that party or group in the order shown “below the line” on the ballot-paper. The full list of candidates shown “below the line” will remain as an option for those voters who wish to follow their own preferences rather than the party preferences reflected on the ballot-paper. In addition, those voters who record a vote “above the line” for a party or other group will now be able to determine for themselves whether they wish to record preferences for other parties or groups and, if so, the order in which they wish to record their preferences (instead of the decision on whether preferences are to be given and the order in which they are given being determined by the party or other group in the group voting ticket submitted to the returning officer). The amended provisions mirror the system adopted under the *Parliamentary Electorates and Elections Act 1912*.

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Explanatory note

This Regulation amends the *Local Government (Elections) Regulation 1998* as a consequence of the replacement of group voting tickets with group voting squares as discussed above, removing the ability of a group to automatically allocate preferences to other groups and candidates on the ballot-paper.

This Regulation also requires the registration of electoral material for a particular election and prohibits the distribution of any unregistered electoral material on the polling day for an election. (Proposed clauses 38A and 108A are modelled on sections 151G and 151F of the *Parliamentary Electorates and Elections Act 1912*, respectively.)

This Regulation is made under the *Local Government Act 1993* (as amended by the *Local Government Amendment Act 2000*), including section 748 (the general regulation-making power), item 4 of Schedule 6, which authorises the making of regulations for or with respect to council polls and constitutional referendums and item 14 of Schedule 6, which authorises the making of regulations for or with respect to elections.

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1 Name of Regulation

This Regulation is the *Local Government (Elections) Amendment Regulation 2002*.

2 Commencement

- (1) This Regulation commences on 1 June 2003, except as provided by subclause (2).
- (2) Schedule 1 [15] to this Regulation (and clause 3, in its application to Schedule 1 [15]) commences on 1 June 2002.

3 Amendment of Local Government (Elections) Regulation 1998

The *Local Government (Elections) Regulation 1998* is amended as set out in Schedule 1.

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Schedule 1 Amendments

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(Clause 3)

[1] Clause 20 Notice of election

Omit “and (if applicable) the grouping of candidates and creation of group voting tickets” from clause 20 (2) (e).

Insert instead “, the grouping of candidates and the creation of group voting squares”.

[2] Clause 33 Claims for grouping of candidates

Omit “and group voting tickets” from clause 33 (1).

[3] Clause 33 (3) (b)

Omit “the third day after”.

[4] Clause 34 Group voting tickets

Omit the clause.

[5] Clause 35 Order of candidates and groups on ballot-papers

Omit “the third day after” from clause 35 (1).

[6] Clause 35 (2)

Omit the subclause.

[7] Clause 38 Form of ballot-papers

Omit “ticket” wherever occurring from clause 38 (6) (b) and (c).

[8] Clause 38 (8)

Omit “group voting ticket” wherever occurring.

Insert instead “group voting square”.

[9] Clause 38A

Insert after clause 38:

38A Registration of electoral material

- (1) For the purposes of clause 108A, an application may be made, in a form approved by the Electoral Commissioner, to the Electoral Commissioner for the registration of electoral material for a particular election.
- (2) An application must be made during the period commencing on nomination day for the election and ending on the day that is 8 days after that day.
- (3) However, an application may be made to the Electoral Commissioner, during the period commencing on the third day before nomination day and ending on the day before nomination day, for preliminary advice on whether electoral material may be registered, even though the material is incomplete.
- (4) An application must contain a draft or sample of the electoral material.
- (5) The Electoral Commissioner may allow the draft or sample to be altered or replaced before agreeing to registration.
- (6) Registration of the electoral material is effected by the issue of a certificate of registration (in a form approved by the Electoral Commissioner) in respect of a draft or sample of the electoral material.
- (7) The Electoral Commissioner must register the electoral material if satisfied that registration is not prohibited by this clause.
- (8) The Electoral Commissioner may however refuse to register the electoral material if the application for registration was not made in accordance with this clause.
- (9) The Electoral Commissioner must not register the electoral material if it appears to the Electoral Commissioner:
 - (a) in the case of material that contains directions or suggestions (whether express or implied) as to how to

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- vote in accordance with the ticket of a political party, group of candidates or candidate, that:
- (i) the party is not registered under Part 7 of Chapter 10 of the Act or the group or candidate is not registered under Part 8 of Chapter 10 of the Act, or
 - (ii) the application was not made by the registered officer, by the candidates in the group or their official agent or by the candidate or the candidate's official agent (respectively), or
- (b) in the case of material that contains any representation or indication (whether express or implied) that any candidate is a member of, or pursues or supports any or all of the objects or platform (whether with or without modification) of, a particular political party or group of candidates, that:
- (i) the party is not registered under Part 7 of Chapter 10 of the Act or the group is not registered under Part 8 of Chapter 10 of the Act, or
 - (ii) the candidate's affiliation with the party or group is not included in the Local Government Register of Candidates under section 325 of the Act, or
 - (iii) the application was not endorsed in writing by the registered officer or by the other candidates in the group or their official agent, or
- (c) in the case of material that contains directions or suggestions (whether express or implied) as to how to vote in accordance with the ticket of a political party or group of candidates in respect of an election, that:
- (i) the party or group has not endorsed a candidate for the election, or
 - (ii) the material directs or suggests that a candidate or candidates not endorsed by it should be given the first or highest preference or preferences, or
- (d) in the case of material that contains directions or suggestions (whether express or implied) as to how to vote in accordance with the ticket of a candidate in respect of an election, that the candidate is not a candidate in that election, or

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- (e) in the case of material that contains directions or suggestions (whether express or implied) as to how to vote without using group voting squares, that the material does not indicate preferences for at least the number of candidates to be elected, or
 - (f) in the case of material that contains directions or suggestions (whether express or implied) as to how to vote by using group voting squares, that the material does not indicate preferences for at least two groups having group voting squares, or
 - (g) that the material is intended or likely to mislead or improperly interfere with any elector in or in relation to the casting of his or her vote, because of the use, in the material, of any matter suggesting or indicating party or group affiliation (whether or not that matter is the same as or similar to matter included in a register under Part 8 of Chapter 10 of the Act), or
 - (h) that the material contains words that are obscene or offensive.
- (10) Registration may be unconditional or subject to conditions specified in the certificate of registration.
- (11) A certificate signed by the Electoral Commissioner and certifying that specified material was or was not registered on a specified day or during a specified period is admissible in proceedings for an offence under clause 108A and is, without the need for further proof, evidence of the matters certified.
- (12) Electoral material is to be taken to be registered in accordance with this clause even though the material contains some differences from the draft or sample in respect of which the certificate of registration was issued, so long as the material is substantially the same as the draft or sample.
- (13) Registration of electoral material is not a defence to a prosecution for an offence under clause 109.
- (14) In this clause:
- electoral material* means any “how to vote” card, handbill, pamphlet or card:
- (a) containing any representation of a ballot-paper or portion of a ballot-paper, or

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- (b) containing any representation apparently intended to represent a ballot-paper or portion of a ballot-paper, or
- (c) having on it any directions or suggestions (whether express or implied) in relation to the casting of votes.

official agent has the same meaning as it has in the *Election Funding Act 1981*.

[10] Clause 65 Display of group voting tickets

Omit the clause.

[11] Clause 76 Informal ballot-papers

Insert after clause 76 (2):

- (2A) Despite subclause (1), a ballot-paper of an elector at an election is not informal merely because it does not show the minimum number of preferences required by the directions so long as it shows at least half of the minimum number of preferences required by the directions.

[12] Clause 76 (3)

Insert “at least half of” after “shows”.

[13] Clause 76, note

Insert at the end of clause 76:

Note. Section 308C of the Act makes provision concerning the formality of ballot-papers where the voter marks, crosses or ticks a group voting square, or where the ballot papers contain the name of a candidate whom a court has declared to be incapable of being elected.

[14] Clause 108A

Insert after clause 108:

108A Distribution of electoral material on polling day

- (1) A person must not, in a public place, distribute any electoral material on the polling day for an election unless the material has been registered under clause 38A.

Maximum penalty: 10 penalty units.

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- (2) For the purposes of this clause and without limiting its operation, material is taken to be distributed if it is left in such a position and in such circumstances as to indicate that it is intended to be available for collection by members of the public who are in a public place.
- (3) In this clause:
electoral material means any “how to vote” card, handbill, pamphlet or card:
- (a) containing any representation of a ballot-paper or portion of a ballot-paper, or
 - (b) containing any representation apparently intended to represent a ballot-paper or portion of a ballot-paper, or
 - (c) having on it any directions or suggestions (whether express or implied) in relation to the casting of votes.
- [15] Clause 123A Modification of Parliamentary Electorates and Elections Act 1912—registration of political parties**
- Omit the clause.
- [16] Schedule 6 Constitutional referendums and council polls**
- Omit “65,” from clause 1 (b).
- [17] Schedule 8 Forms**
- Omit “Ticket” wherever occurring from Form 6.
- [18] Schedule 8, Form 6**
- Omit “Place the number “1” in one and one only of these squares to indicate the voting ticket you wish to adopt as your vote”.
- Insert instead “Place the number “1” in the square above the group of candidates for whom you wish to vote. If you wish to vote for additional candidates, place consecutive numbers beginning with the number “2” in the squares above the additional groups of candidates in the order of your preferences for them”.