



New South Wales

# Ambulance Services Regulation 2005

under the

Ambulance Services Act 1990

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Ambulance Services Act 1990*.

JOHN HATZISTERGOS, M.L.C.,  
Minister for Health

## Explanatory note

The object of this Regulation is to remake, with minor amendments, the provisions of the *Ambulance Services Regulation 2000* which is repealed on 1 September 2005 by section 10 (2) of the *Subordinate Legislation Act 1989*. The new Regulation makes provision for the following matters:

- (a) the duties of employees of the Ambulance Service, including the duty to obey orders and to wear a uniform,
- (b) the entitlements of employees who are subpoenaed or called as witnesses,
- (c) management of employee conduct and performance (these provisions have been updated to reflect other current public sector provisions),
- (d) matters relating to the election of the elected staff director of the Ambulance Service Board, including administrative matters, the calling of elections, nominations, ballots, the scrutiny and count and offences.

This Regulation is made under the *Ambulance Services Act 1990*, including section 30 (the general regulation-making power) and clause 2 of Schedule 1.

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

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## Ambulance Services Regulation 2005

under the

Ambulance Services Act 1990

### Part 1 Preliminary

#### 1 Name of Regulation

This Regulation is the *Ambulance Services Regulation 2005*.

#### 2 Commencement

This Regulation commences on 1 September 2005.

**Note.** This Regulation replaces the *Ambulance Services Regulation 2000* which is repealed on 1 September 2005 by section 10 (2) of the *Subordinate Legislation Act 1989*.

#### 3 Definitions

(1) In this Regulation:

**employee** means a person appointed and employed by the Ambulance Service under section 13 of the Act.

**supervisor** means a person under whose control or supervision an employee is placed.

**the Act** means the *Ambulance Services Act 1990*.

(2) Notes included in this Regulation do not form part of this Regulation.

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Clause 4 Ambulance Services Regulation 2005

Part 2 Employees

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### Part 2 Employees

#### 4 Lawful instructions to be obeyed

- (1) An employee must obey promptly a lawful instruction that is:
  - (a) consistent with such protocols and procedures as may be issued by the Ambulance Service from time to time, and
  - (b) given to the employee by the employee's supervisor.
- (2) An employee may appeal in writing to the Ambulance Service against an instruction given to the employee. The appeal must be made through the supervisor who gave the instruction. However, the employee must, pending the determination of the appeal, comply with subclause (1) in relation to the instruction.

#### 5 Uniform when on duty

An employee must, when performing his or her duties, wear the uniform (if any) that the Ambulance Service determines from time to time to be the uniform for the class of employee to which the employee belongs.

#### 6 Uniform outside hours of duty

An employee must not wear a uniform issued by the Ambulance Service except when on duty or when travelling to or from duty or with the permission of the Ambulance Service.

#### 7 Absence from duty

- (1) An employee must not absent himself or herself from duty without the permission of the Ambulance Service or a member of staff of the Ambulance Service who is superior to the employee.
- (2) An employee who is absent from duty without leave must, as soon as practicable, furnish the employee's supervisor with an explanation of the reason for the employee's absence together with:
  - (a) if the absence exceeds 2 working days (or such shorter period as the Ambulance Service may determine in a particular case) and is due to illness, a certificate signed by a medical practitioner certifying that the employee is, because of that illness, unfit to perform the employee's duties, or
  - (b) if the absence is due to a pressing necessity requiring the employee's absence from duties, such evidence (if any) relating to the necessity as the Ambulance Service directs, either generally or in any particular case or class of cases.

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- (3) Subclause (2) is subject to any award, or industrial agreement or enterprise agreement, that applies to the employee as an employee of the Ambulance Service.

**8 Other employment**

- (1) An employee must not, except with the written permission of the Ambulance Service, engage in any employment (whether or not for remuneration) otherwise than in connection with his or her employment by the Ambulance Service.
- (2) If an employee is the holder of any office or is engaged in any employment otherwise than in connection with his or her employment by the Ambulance Service, the employee must at once notify the Ambulance Service of that fact.
- (3) The Ambulance Service may require that employee to resign that office or abstain from engaging in that employment.
- (4) Permission given for the purposes of subclause (1) may be withdrawn by the Ambulance Service at any time. The withdrawal must be in writing given or sent to the employee.

**9 Entitlements as witness in official capacity**

- (1) An employee who, in his or her official capacity, is subpoenaed or called as a witness must pay any money received by the employee as a witness to the Ambulance Service.
- (2) However, the employee is entitled to be paid in full by the Ambulance Service for any time spent as a witness and, in addition, to be paid such travelling and out-of-pocket expenses as the Ambulance Service may determine.

**10 Entitlements as witness in private capacity**

- (1) An employee who, in his or her private capacity, is subpoenaed or called as a witness by the Crown (whether in right of a State or of the Commonwealth):
- (a) must be granted special leave of absence with pay for the period during which the employee is necessarily absent from duty, and
  - (b) must pay to the Ambulance Service any money paid to the employee as a witness (other than money paid to the employee on account of travelling and out-of-pocket expenses).
- (2) An employee who, in his or her private capacity, is subpoenaed or called as a witness, but not by the Crown (whether in right of a State or of the Commonwealth):

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Part 2              Employees

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- (a) is entitled to be granted leave of absence for the period during which the employee is necessarily absent from duty, and
- (b) may retain any money paid to the employee as a witness.

### 11 Medical examination

- (1) The Ambulance Service may direct that an employee undergo medical examination for the purpose of ascertaining the employee's fitness to perform his or her duties. An employee given such a direction must submit himself or herself to examination by a medical practitioner approved by the Ambulance Service.
- (2) The Ambulance Service may direct an employee to undergo such medical examination as the Ambulance Service considers necessary if there is reason to believe that the health of the employee:
  - (a) may mean that the employee is a danger to other employees or to the public, or
  - (b) is likely to be seriously affected by the employee remaining on duty (or, if the employee is absent from duty, by the employee's resumption of duty).
- (3) If the Ambulance Service has given a direction to an employee under subclause (2) and has made it clear to the employee that the direction is given under that subclause, the employee (if on duty) must cease duty immediately and (in any case) must not resume duty until the completion of the medical examination.

### 12 Payment of increment

- (1) The payment of any increment to an employee is subject to the Ambulance Service being satisfied that the conduct of the employee and the manner in which the employee discharges his or her duties warrant that payment.
- (2) This clause is subject to any award, or industrial agreement or enterprise agreement, that applies to the employee as an employee of the Ambulance Service.



## Part 3 Management of conduct and performance

### Division 1 Preliminary

#### 13 Part applies to employees (except Chief Executive Officer)

This Part applies to employees of the Ambulance Service but (unless otherwise expressly provided) does not apply to the Chief Executive Officer of that Service.

#### 14 Objects of Part

The objects of this Part are as follows:

- (a) to protect the health and safety of the public by providing mechanisms to ensure that employees of the Ambulance Service are fit to perform their duties,
- (b) to ensure that the public interest is protected,
- (c) to maintain appropriate standards of conduct and work-related performance in the Ambulance Service,
- (d) to protect and enhance the integrity and reputation of the Ambulance Service.

#### 15 Definitions

- (1) In this Part:

***ambulance officer*** means an employee of the Ambulance Service who is directly involved in the provision or delivery of clinical or medical services to members of the public.

***disciplinary action***, in relation to an employee of the Ambulance Service, means any one or more of the following:

- (a) dismissal from the Ambulance Service,
- (b) directing the employee to resign, or to be allowed to resign, from the Ambulance Service within a specified time,
- (c) if the employee is on probation—annulment of the employee's appointment,
- (d) except in the case of a senior executive officer—reduction of the employee's classification or position,
- (e) a caution or reprimand.

***internal disclosure*** means a disclosure made by an employee of the Ambulance Service regarding the alleged misconduct of another employee of the Ambulance Service.

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Clause 15 Ambulance Services Regulation 2005

Part 3 Management of conduct and performance

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***misconduct*** includes, but is not limited to, any of the following:

- (a) a contravention (whether by act or omission) of any provision of the Act or this Regulation,
- (b) unsatisfactory professional conduct,
- (c) performance of duties in such a manner as to justify the taking of disciplinary action,
- (d) taking any detrimental action (within the meaning of the *Protected Disclosures Act 1994*) against a person that is substantially in reprisal for the person making a protected disclosure within the meaning of that Act,
- (e) taking any action against another employee that is substantially in reprisal for an internal disclosure made by that employee.

***procedural guidelines*** means the guidelines in force from time to time under clause 16.

***remedial action***, in relation to an employee of the Ambulance Service, means any one or more of the following:

- (a) counselling,
- (b) training and development,
- (c) monitoring the employee's conduct or performance,
- (d) implementing a performance improvement plan,
- (e) the issuing of a warning to the employee that certain conduct is unacceptable or that the employee's performance is not satisfactory,
- (f) transferring the employee to another position in the Ambulance Service that does not involve a reduction of the employee's classification or position,
- (g) any other action of a similar nature.

***senior executive officer*** means an employee of the Ambulance Service who is employed under a fixed term contract, the conditions of which are fixed by the Health Administration Corporation.

***serious offence*** means an offence (whether or not committed in New South Wales) which, if committed in New South Wales, would be punishable by imprisonment for 12 months or more (whether or not in addition to a fine) in New South Wales.

***traffic offence*** means any of the following offences:

- (a) an offence under section 25A of the *Road Transport (Driver Licensing) Act 1998* (relating to driving while disqualified or unlicensed),

- (b) an offence under section 19 (2) of the *Road Transport (General) Act 1999* (Authorised officer may require production of driver licence and name and address from driver or rider),
- (c) an offence under any of the following sections of the *Road Transport (Safety and Traffic Management) Act 1999*:
  - (i) section 9 (Presence of prescribed concentration of alcohol in person's blood),
  - (ii) section 12 (Use or attempted use of a vehicle under the influence of alcohol or any other drug),
  - (iii) section 42 (Negligent, furious or reckless driving),
  - (iv) section 43 (Menacing driving),
  - (v) section 70 (Duty to stop and give assistance where person killed or injured in road accident).

***unsatisfactory professional conduct***, in relation to an ambulance officer, includes any of the following:

- (a) any conduct that demonstrates that the knowledge, skill or judgment possessed, or care exercised, by the ambulance officer in the provision or delivery of clinical or medical services to members of the public is significantly below the standard reasonably expected of an ambulance officer of an equivalent level of training or experience,
  - (b) the ambulance officer's failure without reasonable excuse to comply with a direction by the Ambulance Service to provide information with respect to a complaint under this Part against the ambulance officer,
  - (c) any other improper or unethical conduct relating to the ambulance officer.
- (2) In this Part, a reference to an allegation that an employee may have engaged in misconduct includes a reference to the Chief Executive Officer being made aware, or becoming aware, by any means that the employee may have engaged in misconduct.
- (3) For the purposes of this Part, the subject-matter of an allegation of misconduct may relate to an incident or conduct that happened:
- (a) while the employee concerned was not on duty, or
  - (b) before the employee was appointed to his or her position.

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Clause 16            Ambulance Services Regulation 2005

Part 3                Management of conduct and performance

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### **Division 2        Dealing with misconduct**

#### **16    Issuing of procedural guidelines**

- (1) The Ambulance Service may, from time to time, issue guidelines for the purposes of:
  - (a) dealing with allegations of misconduct as a disciplinary matter, and
  - (b) dealing with employees of the Ambulance Service who suffer from an impairment including habitual drunkenness or addiction to a deleterious drug, and
  - (c) dealing with unsatisfactory professional conduct, and
  - (d) the taking of disciplinary action with respect to employees under this Part.
- (2) The Ambulance Service may from time to time amend, revoke or replace the procedural guidelines.
- (3) The procedural guidelines as in force from time to time must be made publicly available in such manner as the Ambulance Service thinks appropriate.
- (4) In the event of any inconsistency between a provision contained in the procedural guidelines and these Regulations (including the objects of this Part), the latter is to prevail.

#### **17    Requirements relating to procedural guidelines**

- (1) The procedural guidelines must be consistent with the rules for procedural fairness.
- (2) Without limiting subclause (1), the procedural guidelines are to ensure that:
  - (a) the employee to whom an allegation of misconduct relates is advised in writing of the alleged misconduct and that the allegation may lead to disciplinary action being taken with respect to that employee, and
  - (b) the employee is given an opportunity to respond to the allegation, and
  - (c) during any interview or inquiry that may be held in relation to the allegation, the employee may be represented by a solicitor, barrister or agent.
- (3) A formal hearing involving the calling and cross-examination of witnesses is not to be held in relation to an allegation of misconduct and the taking of disciplinary action with respect to an employee.

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- (4) However, subclause (3) does not prevent the Chief Executive Officer from:
- (a) conducting such investigations into an allegation of misconduct as the Chief Executive Officer considers necessary, or
  - (b) conducting interviews with the employee to whom the allegation relates or with any other person in connection with the matter concerned, or
  - (c) taking signed statements from the employee or any such person.

**18 Dealing with allegations of misconduct**

- (1) If an allegation is made to the Chief Executive Officer that an employee of the Ambulance Service may have engaged in any misconduct, the Chief Executive Officer may:
- (a) decide to deal with the allegation as a disciplinary matter in accordance with the procedural guidelines, or
  - (b) decide that it is appropriate to take remedial action with respect to the employee.
- (2) After dealing with an allegation of misconduct as a disciplinary matter in accordance with the procedural guidelines, the Chief Executive Officer may, if the Chief Executive Officer is of the opinion that the employee has engaged in any misconduct, decide to take disciplinary action with respect to the employee.
- (3) Before any disciplinary action is taken with respect to an employee under this clause, the employee must be given an opportunity to make a submission in relation to the disciplinary action that the Chief Executive Officer is considering taking.
- (4) Even though the Chief Executive Officer decides to deal with an allegation of misconduct as a disciplinary matter in accordance with the procedural guidelines, the Chief Executive Officer may, at any stage of the process:
- (a) decide to take remedial action with respect to the employee concerned, or
  - (b) decide to dismiss the allegation, or decide that no further action is to be taken in relation to the matter, or both.
- (5) A decision under this clause by the Chief Executive Officer to take remedial action with respect to an employee does not, if it appears to the Chief Executive Officer that the employee may have engaged in any misconduct while the remedial action is being taken, prevent the Chief Executive Officer from dealing with the alleged misconduct as a disciplinary matter under this clause.

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Clause 19          Ambulance Services Regulation 2005

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### **Division 3          Dealing with criminal conduct**

#### **19    Offences to be reported**

- (1) An employee of the Ambulance Service who is charged with having committed, or is convicted of, a serious offence must immediately report that fact in writing to the Ambulance Service.
- (2) An employee of the Ambulance Service who is required to drive a motor vehicle as part of his or her duties and who is charged with having committed, or is convicted of, a traffic offence must immediately report that fact in writing to the Ambulance Service.
- (3) The supervisor of an employee of the Ambulance Service who has reason to believe that the employee has been charged with having committed, or has been convicted of, a serious offence or traffic offence but has not reported that fact in accordance with subclause (1) or (2) must immediately report that fact to the Ambulance Service.

#### **20    Driving disqualification to be reported**

An employee of the Ambulance Service who is required to drive a motor vehicle as part of his or her duties and who is disqualified from holding a driver licence or whose licence is cancelled or suspended must immediately report the disqualification, cancellation or suspension to the Ambulance Service.

#### **21    Disciplinary action may be taken if employee is convicted of serious offence or traffic offence**

- (1) If an employee of the Ambulance Service is convicted of a serious offence, the Chief Executive Officer may:
  - (a) decide to take disciplinary action with respect to the employee, or
  - (b) decide to take remedial action with respect to the employee.
- (2) If an employee of the Ambulance Service who is required to drive a motor vehicle as part of his or her duties is convicted of a traffic offence, the Chief Executive Officer may:
  - (a) decide to take disciplinary action with respect to the employee, or
  - (b) decide to take remedial action with respect to the employee.
- (3) Before any disciplinary action is taken with respect to an employee under this clause, the employee must be given an opportunity to make a submission in relation to the disciplinary action that the Chief Executive Officer is considering taking.

- (4) A reference in subclause (1) or (2) to the conviction of an employee for a serious offence or a traffic offence includes a reference to the employee having been found guilty by a court of such an offence but where no conviction is recorded.

#### **Division 4 Dealing with unsatisfactory performance**

##### **22 Dealing with unsatisfactory performance**

- (1) If the Chief Executive Officer is of the opinion that an employee of the Ambulance Service is not performing the employee's duties in a satisfactory manner, the Chief Executive Officer may decide to take remedial action with respect to the employee.
- (2) If:
- (a) remedial action is taken with respect to an employee, and
  - (b) the Chief Executive Officer is, after the employee has been given a reasonable opportunity in which to improve his or her performance, of the opinion that the employee's performance is still unsatisfactory,
- the Chief Executive Officer may notify the employee in writing that the employee's performance is still unsatisfactory and that the employee's performance may lead to disciplinary action being taken with respect to the employee. The employee must be given an opportunity to respond to the Chief Executive Officer's opinion about the employee's performance.
- (3) The Chief Executive Officer may, after considering any response by the employee, decide to take disciplinary action with respect to the employee.
- (4) Before any disciplinary action is taken with respect to an employee under this clause, the employee must be given an opportunity to make a submission in relation to the disciplinary action that the Chief Executive Officer is considering taking.

#### **Division 5 Miscellaneous provisions**

##### **23 Suspension of officers from duty pending decision in relation to misconduct or criminal conviction**

- (1) If:
- (a) an allegation that an employee has engaged in misconduct is being dealt with as a disciplinary matter in accordance with the procedural guidelines, or
  - (b) an employee is charged with having committed a serious offence,

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Clause 24          Ambulance Services Regulation 2005

Part 3              Management of conduct and performance

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the Chief Executive Officer may suspend the employee from duty until the allegation of misconduct or the criminal charge has been dealt with.

- (2) The Chief Executive Officer may direct that salary payable to a person as an employee is to be withheld while the person is suspended from duty under this clause.
- (3) A direction under subclause (2) may only be given if the withholding of salary in the circumstances is consistent with any guidelines issued by the Premier in relation to the withholding of pay for suspended employees.
- (4) If:
  - (a) it is decided to take disciplinary action with respect to the person for the misconduct, or
  - (b) the person is convicted of the offence concerned,the salary withheld under subclause (2) is forfeited to the State unless the Chief Executive Officer otherwise directs or that salary was due to the person in respect of a period before the suspension was imposed.
- (5) If the Chief Executive Officer has suspended an employee from duty under this clause, the Chief Executive Officer may at any time remove the suspension.

### **24 Implementation of decisions under this Part**

A decision of the Chief Executive Officer to take disciplinary action or remedial action under this Part with respect to an employee may be carried into effect at any time.

### **25 Appointment after reduction of employee's classification or position**

Any appointment required as the result of the taking of disciplinary action comprising reduction of an employee's classification or position is to be made by the Chief Executive Officer.

### **26 Officers retiring or resigning before disciplinary action is taken**

- (1) An allegation that an employee has engaged in misconduct may be dealt with under this Part, and disciplinary action may be taken with respect to the employee, even though the employee has retired or resigned.
- (2) The taking of disciplinary action with respect to the former employee does not affect the former employee's retirement or resignation or the benefits, rights and liabilities arising from the retirement or resignation.
- (3) Nothing in this clause affects any power under this Regulation to refuse to accept the resignation of an employee.



## Part 4 Elected staff director

### Division 1 Preliminary

#### 27 Application

This Part applies to the election of a person to hold office as the elected staff director of the Ambulance Service Board.

#### 28 Definitions

In this Part:

*casual employee* means a person appointed and employed by the Ambulance Service under section 13 of the Act 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 Part 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 Part by the notice of the election or, if that close has been postponed, the time and date to which that close has been postponed.

### Division 2 Administration of elections

#### 29 Delegation by returning officer

The returning officer may delegate any of the returning officer's functions under this Part or Schedule 1 to:

- (a) any member of staff of the Electoral Commissioner of New South Wales, or
- (b) any employee of the Ambulance Service.

#### 30 Decision of returning officer final

If the returning officer is permitted or required by this Part or Schedule 1 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.

#### 31 Costs of election

- (1) The costs of conducting an election are to be paid by the Ambulance Service.

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Part 4              Elected staff director

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- (2) The costs of the Electoral Commissioner of New South Wales in conducting the election are recoverable from the Ambulance Service as a debt owed to the Electoral Commissioner.

### Division 3          Pre-ballot procedure

#### 32    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.

#### 33    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.
- (2) The times and dates, and the publication of notice of them, must be in accordance with clause 32 (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.

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**34 Notification of Chief Executive Officer**

- (1) The returning officer must notify the Chief Executive Officer in writing that an election is to be held.
- (2) The returning officer must also notify the Chief Executive Officer in writing of the times and dates fixed:
  - (a) for the close of nominations, and
  - (b) for the determination of the order of candidates, and
  - (c) for the close of the ballot, including any later times and dates.

**35 Nomination**

- (1) For a nomination for election to be valid:
  - (a) it must be valid in terms of clause 2 (4) of Schedule 1 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.

**36 Withdrawal of nomination**

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

**37 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:
  - (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 Ambulance Service,
  - (e) up to 50 words of additional material relevant to the person's candidature.

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Clause 38          Ambulance Services Regulation 2005

Part 4              Elected staff director

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- (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.

### **38 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.

### **39 Electoral roll**

- (1) If a ballot is to be held, the returning officer is to notify the Chief Executive Officer 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 Ambulance 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 to which an employee's ballot paper is to be sent 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 any employee of the Ambulance Service to inspect the roll without charge during the normal office hours of the returning officer.

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**40 Casual employees may enrol**

- (1) A person who is a casual employee may apply in writing to the Chief Executive Officer to be included on the roll for an election.
- (2) The Chief Executive Officer must include the person on the roll if:
  - (a) 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
  - (b) the person is still an employee of the Ambulance Service at the close of nominations.

**Division 4 Ballot****41 Type of ballot**

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

**42 Order of candidates on ballot-papers**

- (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 person 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

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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.

### 43 Form of ballot-papers

- (1) The name of the candidate that 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 that has been next taken from the ballot-box is to be shown immediately below the name of the candidate that 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 two 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.

### 44 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.

**45 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.

**46 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****47 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.

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### 48 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.
- (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 any inquiries that 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.

### 49 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.

### 50 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.



**51 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
  - (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 two 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.

**52 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.
- (2) The returning officer is to publish notice of the result of the election in the Gazette.

**Division 6 Miscellaneous****53 Voting not compulsory**

Voting is not compulsory.

**54 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 (7) of Schedule 1 to the Act provides that the Minister may appoint a person if an election fails.

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### 55    **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 Part and Schedule 1.

### 56    **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.
- (2) If there was a ballot, the officer is to make two parcels:
  - (a) one parcel containing the marked and unmarked ballot-papers, together with the copies of the roll that were actually used, and
  - (b) the other parcel containing the other papers used in the election.
- (3) 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.
- (4) The Electoral Commissioner of New South Wales is to have each parcel kept securely for at least 12 months, and then destroyed.

### 57    **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 that 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 Part or Schedule 1.

Maximum penalty: 5 penalty units.

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## **Part 5 Miscellaneous**

### **58 Prescribed function of Ambulance Service**

The function of providing assistance to or co-operating with any person or organisation in connection with the depiction of ambulance services in the news or entertainment media is prescribed for the purposes of section 12 (2) of the Act.

### **59 Savings provision**

Any act, matter or thing that, immediately before the repeal of the *Ambulance Services Regulation 2000*, had effect under that Regulation is taken to have effect under this Regulation.

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Schedule 1 Counting of votes

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### Schedule 1 Counting of votes

(Clause 50)

#### 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 the unrejected ballot-papers 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,

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- (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 on 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 must write the names of the candidates who have equal numbers of votes on similar slips of paper. The returning officer must then fold the slips so as to prevent the names being seen, mix them, and draw 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.