



New South Wales

Local Government (General) Amendment (Elections) Regulation 2024

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*.

RON HOENIG, MP
Minister for Local Government

Explanatory note

This regulation makes amendments to the *Local Government (General) Regulation 2021* relating to the conduct of local government elections.

The objects of this regulation are as follows—

- (a) to remove a provision that provides that every elector enrolled on the roll of electors for the City of Sydney is automatically qualified for a postal vote,
- (b) to remove the requirement that a postal vote certificate be printed on an envelope,
- (c) to provide that a pre-poll ballot-box is to be delivered to the returning officer as soon as practicable after 6pm on the day before election day, or at an earlier time specified by the election manager or returning officer,
- (d) to reduce the pre-poll voting period to between the seventh and first days before election day,
- (e) to extend the prohibition on the use of technology assisted voting, other than telephone voting for electors who are blind or have low vision, to 1 September 2028,
- (f) to clarify how the requirement for relevant names and addresses to be included on electoral material applies in relation to social media posts,
- (g) to create an offence of filming or photographing an election official if the filming or photographing is reasonably likely to cause the official to be intimidated or harassed, and clarify an existing prohibition on hindering or obstructing an election official,
- (h) to provide that the election manager and each polling place manager may give directions to ensure the health and safety of electors and election officials at any election or any place where voting is occurring,
- (i) to amend the method for the initial counting of votes for ballot-papers that use group voting squares,
- (j) to remove obsolete references to the *City of Sydney Act 1988*,
- (k) to adopt the *Electoral Act 2017*, section 187A for local government elections.

This regulation is made under the *Local Government Act 1993*, including section 748, the general regulation-making power, and Schedule 6, item 14.

Local Government (General) Amendment (Elections) Regulation 2024

under the

Local Government Act 1993

1 Name of regulation

This regulation is the *Local Government (General) Amendment (Elections) Regulation 2024*.

2 Commencement

This regulation commences on the day on which it is published on the NSW legislation website.

Schedule 1 Amendment of Local Government (General) Regulation 2021

[1] Section 275 Definitions

Insert in alphabetical order in section 275(1)—

postal vote certificate envelope means an envelope on which a postal vote certificate is printed.

[2] Section 281 Enrolment claims and objections

Omit “(or section 16 or 16A of the *City of Sydney Act 1988*)” from section 281(1)(g).

[3] Section 313 Postal voting: qualifications

Omit “or” from the end of section 313(l) and omit section 313(m).

[4] Section 314 Applications for postal voting

Omit “postal ballot-paper and postal vote certificate envelope” from section 314(1).

Insert instead “postal vote”.

[5] Section 317 Issue of postal ballot-paper

Omit section 317(1)(b) and (c). Insert instead—

(b) either—

(i) a postal vote certificate envelope and, if the envelope is not addressed to the returning officer, another envelope addressed to the returning officer, or

(ii) a postal vote certificate and an envelope addressed to the returning officer for the return of the ballot-paper and postal vote certificate,

[6] Section 317(2)

Omit “Ballot-papers and envelopes”.

Insert instead “Items specified in subsection (1)(a), (b) and (d)”.

[7] Section 317(2)(b)

Omit “postal ballot-paper and postal vote certificate envelope”.

Insert instead “postal vote”.

[8] Section 318 Postal voting procedure

Omit section 318(3)(c) and (d). Insert instead—

(c) if the elector was issued with a postal vote certificate envelope addressed to the returning officer—place the ballot-paper in the envelope and close and seal the envelope,

(d) if the elector was issued with a postal vote certificate envelope not addressed to the returning officer—place the ballot paper in the postal vote certificate envelope, place the postal vote certificate envelope in the envelope that is addressed to the returning officer and close and seal that envelope,

(e) if the elector was issued with a postal vote certificate and envelope under section 317(1)(b)(ii)—place the ballot paper and the postal vote certificate in the envelope and close and seal the envelope.

- [9] Section 318(6) and (7)**
Omit “envelope” wherever occurring.
- [10] Section 321 Pre-poll voting: qualifications**
Omit “or” from the end of section 321(1)(i) and omit section 321(1)(j).
- [11] Section 324 Pre-poll ballot-box to be delivered or sent to returning officer**
Omit “as soon as the ballot-box is no longer required for further voting.”.
Insert instead—
—
(a) as soon as practicable after 6pm on the day before election day, or
(b) if the election manager or the returning officer requests the ballot-box be delivered or sent to the returning officer at an earlier time—the earlier time.
- [12] Section 326 Pre-poll voting offices and times**
Omit “twelfth” from section 326(1). Insert instead “seventh”.
- [13] Section 333C Meaning of “eligible elector”**
Omit “postal ballot-paper and postal vote certificate envelope under” from section 333C(1)(a).
Insert instead “postal vote under”.
- [14] Section 333C(1)(a)**
Omit “envelope before”. Insert instead “before”.
- [15] Section 333M, heading**
Omit “during COVID-19 pandemic”.
- [16] Section 333M(1)**
Omit “vision impaired or blind electors, is not to be used at a by-election”.
Insert instead “electors who are blind or have low vision, must not be used at an election”.
- [17] Section 333M(1)(b) and (2)**
Omit “1 September 2024” wherever occurring. Insert instead “1 September 2028”.
- [18] Section 333M(1A) and (1B)**
Insert after section 333M(1)—
(1A) Telephone voting by electors who are blind or have low vision is permitted, but the election manager may, at any time, determine that telephone voting is not permitted at a specified election, or during a specified period during an election.
(1B) A determination under subsection (1A) must be in writing and published on a website maintained by the election manager.
- [19] Section 344A Scrutineers**
Omit “postal vote certificate envelopes” from section 344A(1)(b).
Insert instead “postal vote certificates”.

[20] Section 344B Issue of postal ballot-paper

Omit section 344B(2)(b) and (c). Insert instead—

- (b) either—
 - (i) a postal vote certificate envelope and, if the envelope is not addressed to the returning officer, another envelope addressed to the returning officer, or
 - (ii) a postal vote certificate and an envelope addressed to the returning officer for the return of the ballot-paper and postal vote certificate,

[21] Section 344B(3)

Omit “Ballot-papers and envelopes”.

Insert instead “Items specified in subsection (2)(a), (b) and (d)”.

[22] Section 344C Postal voting procedure

Omit section 344C(3)(c) and (d). Insert instead—

- (c) if the elector was issued with a postal vote certificate envelope addressed to the returning officer—place the ballot-paper in the envelope and close and seal the envelope,
- (d) if the elector was issued with a postal vote certificate envelope not addressed to the returning officer—place the ballot paper in the postal vote certificate envelope, place the postal vote certificate envelope in the envelope that is addressed to the returning officer and close and seal that envelope,
- (e) if the elector was issued with a postal vote certificate and envelope under section 344B(2)(b)(ii)—place the ballot paper and the postal vote certificate in the envelope and close and seal the envelope.

[23] Section 344F, heading

Omit “and envelope”.

[24] Section 344G Request for replacement voting materials

Omit “envelope” wherever occurring in section 344G(1)(a)–(c).

Insert instead “postal vote certificate”.

[25] Section 344G(1)(d) and (3)

Omit “envelope” wherever occurring.

[26] Section 344G(2)(b)

Omit “envelope”. Insert instead “postal vote certificate”.

[27] Section 344G(4)

Omit “envelopes”. Insert instead “certificates”.

[28] Section 344G(5)

Omit “postal vote certificate envelope”. Insert instead “postal vote certificate”.

[29] Section 344G(5)(a) and (c)

Omit “envelope” wherever occurring. Insert instead “certificate”.

[30] Section 347

Omit the section. Insert instead—

347 Preliminary scrutiny of postal ballot-papers

- (1) The returning officer may—
 - (a) without opening it, examine an envelope received by the returning officer containing a ballot-paper to determine whether—
 - (i) the postal vote certificate is visible through a window in the envelope, or
 - (ii) the postal vote certificate is printed on the envelope, and
 - (b) if the postal vote certificate is not visible through a window or printed on the envelope, but the returning officer considers it likely that the postal vote certificate is sealed inside the envelope—
 - (i) open the envelope without destroying it, and
 - (ii) withdraw the documents inside the envelope and ascertain whether the postal vote certificate was sealed inside the envelope, and
 - (iii) if a postal vote certificate was sealed with the ballot-paper inside another envelope, and that envelope has a window through which it is possible to view the postal vote certificate—
 - (A) without further inspecting the documents or allowing another person to inspect the documents, replace the documents in the envelope in a way that enables the postal vote certificate to be visible through the window in the envelope, and
 - (B) reseal the envelope, and
 - (iv) if a postal vote certificate envelope was sealed with the ballot-paper inside another envelope, but that envelope does not have a window through which it is possible to view a postal vote certificate—
 - (A) take out the postal vote certificate envelope, and
 - (B) if the ballot-paper is not sealed inside the postal vote certificate envelope but the returning officer is satisfied that the ballot-paper relates to the postal vote certificate envelope—place the ballot-paper inside the postal vote certificate envelope and seal the postal vote certificate envelope, and
 - (v) if a postal vote certificate was not sealed with the ballot-paper inside the other envelope—
 - (A) without further inspecting the documents or allowing another person to inspect the documents, replace the documents in the envelope, and
 - (B) reseal the envelope, and
 - (C) reject the envelope from further scrutiny.
 - (2) The returning officer—
 - (a) may, on a day not more than 14 days before election day, at an approved time and place, and in the presence of scrutineers who choose to be present, produce the sealed envelopes containing postal votes that have been received by the returning officer, including—

- (i) envelopes that were opened and resealed under subsection (1)(b)(iii), and
 - (ii) postal vote certificate envelopes that were removed from other envelopes under subsection (1)(b)(iv), and
 - (b) must, at the scrutiny, produce all of the following remaining sealed envelopes containing postal votes—
 - (i) envelopes received by the returning officer up to 6pm on the 13th day following the election day,
 - (ii) in relation to an attendance election—envelopes received by an election official before 6pm on election day under section 318(5).
- (3) The returning officer must then—
 - (a) if satisfied the postal vote certificate was properly signed and witnessed and the elector is entitled to vote in the ward or area to which the postal vote certificate relates—accept the ballot-paper for further scrutiny, or
 - (b) if not satisfied—disallow the ballot-paper without opening the envelope.
- (4) If a ballot-paper is accompanied by, but is not inside, a postal vote certificate envelope that has been properly signed and witnessed, the returning officer may accept the ballot-paper for further scrutiny only if satisfied that the postal vote certificate relates to that ballot-paper.
- (5) If the returning officer accepts a ballot-paper for further scrutiny, the returning officer must do the following—
 - (a) open the envelope without destroying it,
 - (b) withdraw the postal ballot-paper,
 - (c) without inspecting the ballot-paper, or allowing another person to inspect the ballot-paper, place the ballot-paper in a ballot-box for further scrutiny.
- (6) To avoid doubt, a ballot-box into which a ballot-paper has been placed under this section must not be opened before the close of voting.

[31] Section 348A Initial scrutiny of ballot-papers and counting of votes

Omit section 348A(3)(e). Insert instead—

- (e) count the votes in a way specified in subsection (3A)(a) or (b).

[32] Section 348A(3A)

Insert after section 348A(3)—

- (3A) For subsection (3)(e), the counting place manager must either—
 - (a) count—
 - (i) the first preferences recorded for each candidate and group of candidates, and
 - (ii) the number of informal votes, and
 - (iii) the number of envelopes containing postal vote certificates or other declarations under this part, or
 - (b) count—
 - (i) the first preferences recorded in each group voting square, and

- (ii) the number of ballot-papers on which a first preference is recorded for a candidate who is in a group with a group voting square other than by placing a mark in a group voting square, and
- (iii) the first preferences recorded for each candidate who is not in a group with a group voting square, and
- (iv) the number of informal votes, and
- (v) the number of envelopes containing postal vote certificates or other declarations under this part.

[33] Section 348A(4A)

Insert after section 348A(4)—

- (4A) To avoid doubt, an election is not invalid just because subsection (3) or (4) was complied with on a day after election day.

[34] Section 356G Name and address on electoral material

Insert after section 356G(2)—

- (2A) For electoral material that is a social media post—
 - (a) the relevant name and address for the electoral material must be legibly shown in the social media post, and
Examples— The relevant name and address for the electoral material may be included—
 - (a) if the social media post includes text—in the text, or
 - (b) if a photograph, image, video or animation is attached to or embedded in the social media post—in the photograph, image, video or animation.
 - (b) if the relevant name and address are shown in a video or animation attached to or embedded in the social media post, the relevant name and address must be legibly shown for a period of at least 3 seconds.

[35] Section 356G(4)(c) and (d)

Insert after section 356G(4)(b)—

- (c) an SMS text message containing electoral material that is distributed by an electoral participant, or an officer, employee or agent of an electoral participant on behalf of the electoral participant, if—
 - (i) the SMS text message includes a hyperlink to a website on which the relevant name and address for the electoral material are published, and
 - (ii) the website on which the relevant name and address are published remains publicly available until the end of the regulated period,
- (d) an SMS text message (the *primary message*) containing electoral material that is distributed by an electoral participant, or an officer, employee or agent of an electoral participant on behalf of the electoral participant, if—
 - (i) a second SMS text message is sent immediately after the primary message, and
 - (ii) the second SMS text message would comply with subsection (2A) if it were a social media post, and
 - (iii) the second SMS text message is sent from the same number as the primary message.

[36] Section 356GAA

Insert after section 356GA—

356GAA Authorisation of automated telephone calls—the Act, s 748(3)

A person must not, during the regulated period, cause, permit or authorise an automated telephone call containing electoral matter to be made to another person, unless the call contains, in a clear voice, spoken in English, the name and address of an individual on whose instructions the call was made.

Maximum penalty—

- (a) for an individual—20 penalty units or imprisonment for 6 months, or both, or
- (b) otherwise—100 penalty units.

[37] Section 356SA Maintenance of order at and near polling places

Omit “Electoral Commissioner” from section 356SA(2)(a).

Insert instead “election manager”.

[38] Section 356SA(3)

Omit the subsection. Insert instead—

- (3) The election manager and each polling place manager may give directions for the following purposes—
 - (a) maintaining order at an election or a place where voting is occurring,
 - (b) protecting the health and safety of persons at an election or a place where voting is occurring.

[39] Section 360 Misconduct by witness to postal vote

Omit “postal ballot-paper and a postal voting envelope” from section 360(1).

Insert instead “postal vote”.

[40] Section 361 Misconduct in relation to postal voting

Omit “postal ballot-paper and a postal voting envelope”. Insert instead “postal vote”.

[41] Section 365 Obstruction of election officials

Omit “election official or scrutineer in the exercise or performance of his or her functions.”.

Insert instead—

election official or scrutineer—

- (a) in the exercise or performance of the official’s or scrutineer’s functions, or
- (b) as the official or scrutineer enters or leaves a polling place or ballot counting place.

[42] Section 365(2)

Insert at the end of the section—

- (2) In this section—
hinder or obstruct includes verbally abuse, stalk, threaten and menace.

[43] Section 365A

Insert after section 365—

365A Filming or photographing election officials

- (1) A person must not film or photograph an election official or scrutineer exercising or performing the official's or scrutineer's functions if the filming or photographing is reasonably likely to cause the official or scrutineer to be intimidated or harassed.

Maximum penalty—10 penalty units.

- (2) A person must not publish or distribute a film or photograph made in the course of committing an offence against subsection (1).

Maximum penalty—10 penalty units.

[44] Section 388A Special format of ballot-papers

Omit “for a postal ballot-paper and postal voting envelope” from section 388A(2)(c)(iii).

[45] Section 388A(7)(b)

Omit “and separate from the postal voting envelope”.

[46] Schedule 12 Penalty notice offences

Omit the matter relating to **Offences under *City of Sydney Act 1988***.