

# Marketing of Primary Products Regulation 2005

[2005-490]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**  
*Parliamentary Electorates and Elections Amendment Act 2006 No 68* (not commenced)

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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New South Wales

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# Marketing of Primary Products Regulation 2005



New South Wales

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the [Marketing of Primary Products Act 1983](#).

IAN MACDONALD, M.L.C., Minister for Primary Industries

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the [Marketing of Primary Products Regulation 2005](#).

### 2 Commencement

This Regulation commences on 1 September 2005.

**Note—**

This Regulation replaces the [Marketing of Primary Products \(Polls and Elections\) Regulation 2000](#) and the [Marketing of Primary Products \(Boards and Committees\) Regulation 2000](#) which are repealed on 1 September 2005 under section 10 (2) of the [Subordinate Legislation Act 1989](#).

### 3 Definitions

(1) In this Regulation:

**election** means an election under Part 2 or 5 of the Act.

**poll** means a poll under Part 2 or 5 of the Act.

**prescribed qualifications** means the qualifications prescribed by clause 4 and Schedule 1.

**returning officer** means:

(a) the Electoral Commissioner for New South Wales, or

(b) a person employed in the office of and nominated by the Electoral Commissioner for the purpose of exercising the functions conferred or imposed on a returning officer by this Regulation.

**the Act** means the *Marketing of Primary Products Act 1983*.

(2) In this Regulation:

- (a) a reference to a Form is a reference to a Form set out in Schedule 2, and
- (b) a reference to a primary product includes a reference to a commodity.

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

#### **4 Prescribed qualifications**

For the purposes of sections 39 (4) and 101 (4) of the Act, the prescribed qualifications in relation to a producer of a particular primary product are the qualifications specified in Schedule 1 in respect of a producer of that product.

## **Part 2 Polls**

### **Division 1 Preliminary**

#### **5 Definitions**

In this Part:

**appropriate officer** means:

- (a) in relation to a poll under section 7 or 81 of the Act—the Director-General, and
- (b) in relation to any other poll—the secretary of the board or committee in respect of which the poll is to be taken.

**calling of the poll** for a poll means the date on which a notice is first published under clause 7 in respect of the poll.

**close of enrolments** for a poll means the final time and date fixed by the returning officer for the close of enrolments in the poll.

**close of exhibition of the roll** for a poll means the final time and date fixed by the returning officer for the close of exhibition of the roll in the poll.

**close of the poll** for a poll means the final time and date fixed by the returning officer for the close of the poll.

**final roll** for a poll means the roll prepared for the poll by the returning officer under Division 3.

**preliminary roll** for a poll means the roll for the poll with which the returning officer is provided under clause 6.

## **Division 2 Calling of the poll**

### **6 Preparation of preliminary roll**

- (1) As soon as practicable after the Governor has directed that a poll be taken in any area on any question, the returning officer must notify the appropriate officer:
  - (a) that a poll is to be held in that area on that question, and
  - (b) that the appropriate officer is required to give the returning officer:
    - (i) a preliminary roll of the persons who, in the opinion of the appropriate officer, are qualified to vote in the poll, and
    - (ii) an appropriately addressed label, or an appropriately addressed envelope, for each person whose name is included in the roll.
- (2) The preliminary roll:
  - (a) must contain the full names (consecutively numbered and listed in alphabetical order) and addresses of the persons whose names are included in the roll, and
  - (b) must be certified by the appropriate officer in accordance with Form 1.
- (3) This clause does not apply to a poll to be held as a consequence of an earlier poll that has failed if a preliminary roll for the earlier poll has already been provided to the returning officer.

### **7 Notice of poll**

- (1) As soon as practicable after the Governor has directed that a poll be taken in any area on any question, the returning officer must cause notice that a poll is to be held:
  - (a) to be published in at least one newspaper circulating generally throughout New South Wales, or
  - (b) to be sent by post to each person whose name is included in the preliminary roll for the poll at the address shown on the roll.
- (2) The notice:
  - (a) must state the question on which the poll is being conducted, and
  - (b) must fix a time and date for the close of exhibition of the preliminary roll, and
  - (c) must advise where copies of the preliminary roll will be exhibited, and
  - (d) must fix a time and date for the close of enrolments, and
  - (e) must specify the qualifications which entitle a person to vote, and



- (f) must advise where applications for enrolment and objections against enrolment may be lodged, and
  - (g) must fix the time and date for the close of the poll.
- (3) The notice must also state that it is compulsory for persons who are entitled to vote in the poll to be enrolled, or to apply for enrolment, in the final roll for the poll.
  - (4) The close of exhibition of the roll must not be earlier than 14 days after the calling of the poll.
  - (5) The close of enrolments must not be earlier than the close of exhibition of the roll or later than 14 days before the close of the poll.
  - (6) The close of the poll must not be earlier than 28 days, or later than 90 days, after the calling of the poll.

### **8 Postponement of poll**

- (1) The returning officer may postpone (for a period not exceeding 14 days) the close of exhibition of the roll, the close of enrolments or the close of the poll by a notice published in the same way as the notice stating that a poll is to be held.
- (2) The power conferred on the returning officer by this clause may be exercised more than once in respect of a poll.

## **Division 3 Preparation of final roll**

### **9 Exhibition of preliminary roll**

The returning officer must cause copies of the preliminary roll to be exhibited for public inspection:

- (a) at the places where applications for enrolment and objections against enrolment may be lodged, and
- (b) for a period of at least 14 days ending at the close of exhibition of the roll.

### **10 Qualifications for voting**

- (1) A person is qualified to vote in a poll if, and only if, the person has the prescribed qualifications.
- (2) This clause does not entitle a person (whether in their own capacity or in their capacity as the representative of some other person):
  - (a) to vote more than once in any poll, or
  - (b) to vote in 2 or more polls if polls are being held simultaneously in different areas.

## **11 Enrolment compulsory**

It is compulsory for every person who is entitled to vote in a poll to be enrolled, or to apply for enrolment, in the final roll for the poll.

## **12 Enrolment of representatives**

- (1) If, in the opinion of the returning officer, a primary product is actually grown or produced for sale:
  - (a) on behalf of a corporation—the corporation is taken to be enrolled, or to apply for enrolment, in the final roll for a poll if, and only if, a nominee of the corporation is so enrolled, or so applies for enrolment, in that roll as the representative of the corporation, or
  - (b) on behalf of a partnership—the partnership is taken to be enrolled, or to apply for enrolment, in the final roll for a poll if, and only if, a nominee of the partnership is so enrolled, or so applies for enrolment, in that roll as the representative of the partnership, or
  - (c) by trustees or by legal personal representatives (whether as agents, administrators or executors or otherwise) on behalf of a person or the estate of a person—the person or estate is taken to be enrolled, or to apply for enrolment, in the final roll for a poll if, and only if, a nominee of those trustees or representatives is so enrolled, or so applies for enrolment, in that roll as the representative of the person or estate.
- (2) Only one person may be nominated to vote in the poll as a representative of the corporation, partnership, person or estate concerned.
- (3) A nominee must be a natural person who is not already enrolled in the final roll for the poll in some other capacity.
- (4) A representative of a corporation, partnership, person or estate is taken to be a producer for the purposes of enrolment and of any poll in which the corporation, partnership, person or estate is qualified to vote.
- (5) In this clause, a reference to a partnership includes a reference to the parties to a share-farming agreement and to any group of persons who, in the opinion of the returning officer, are engaged in a single enterprise in the growing or production for sale of a primary product.
- (6) In forming such an opinion in respect of a group of persons, the returning officer may ignore the existence of any legal entity that consists of or includes persons who form part of the group.
- (7) For the purpose of enabling the returning officer to form an opinion as to whether a primary product is actually grown or produced for sale on behalf of a corporation or a

partnership or by trustees or legal personal representatives on behalf of a person or an estate of a person, the returning officer may require the appropriate officer to furnish the returning officer with such information as the returning officer may specify.

### **13 Applications for enrolment by persons not already enrolled**

- (1) A person whose name does not appear on the preliminary roll for a poll may apply for enrolment in the final roll for the poll.
- (2) The application must be in Form 2 and must be lodged with the returning officer before the close of enrolments.
- (3) On receipt of the application, the returning officer:
  - (a) if satisfied that the applicant is entitled to enrolment, must accept the application and enter the name and address of the applicant in the final roll for the poll, or
  - (b) if not so satisfied, must reject the application and inform the applicant in writing that the application has been rejected, or
  - (c) if the application is not in the proper form or is incomplete, must return the application for correction or completion and consider the duly corrected or completed application in accordance with this clause.
- (4) For the purpose of enabling the returning officer to form an opinion as to whether a person is entitled to enrolment, the returning officer may require the appropriate officer to furnish the returning officer with such information regarding the person as the returning officer may specify.

### **14 Objections to enrolment**

- (1) Before the close of enrolments, the returning officer and any person who is entitled to vote in a poll may object to the inclusion of the name of any person in the final roll.
- (2) An objection:
  - (a) must be in Form 3, and
  - (b) must state the grounds on which it is made, and
  - (c) must be signed by the objector, and
  - (d) must be lodged with the returning officer.
- (3) The returning officer must send particulars of an objection to the person to whom the objection relates.
- (4) The person to whom an objection relates may lodge a written reply with the returning officer within 7 days after the date on which particulars of the objection were sent to

that person.

- (5) The returning officer must consider each objection, and any reply received within that 7 day period, and may make such inquiries as the returning officer thinks fit.
- (6) The returning officer may accept or reject an objection.
- (7) If the returning officer accepts an objection, the returning officer must exclude the name of the person to whom the objection relates from the final roll for the poll and must inform the person and the objector, in writing, that the person's name is so excluded.
- (8) If the returning officer rejects an objection, the returning officer must inform the person to whom the objection relates and the objector, in writing, that the returning officer has rejected the objection.
- (9) The returning officer may require a person who lodges an objection, or who replies to an objection, to verify the objection or reply by statutory declaration.
- (10) For the purpose of enabling the returning officer to make a decision to accept or reject an objection to the inclusion of the name of a person in the final roll, the returning officer may require the appropriate officer to furnish the returning officer with such information regarding the person as the returning officer may specify.

#### **15 Postponement of poll not to affect final roll**

The validity of the final roll for a poll is not affected by the postponement of the close of the poll by a notice published after the close of exhibition of the roll, and the roll remains the final roll for the poll.

### **Division 4 The ballot**

#### **16 Voting optional**

Voting at a poll is not compulsory.

#### **17 Printing of ballot-papers**

- (1) As soon as practicable after the close of enrolments in a poll, the returning officer must cause sufficient ballot-papers to be printed to enable a ballot-paper to be sent to each person whose name is included in the final roll for the poll.
- (2) A ballot-paper for a poll must contain:
  - (a) the question to be voted on in the poll followed by the words "YES" and "NO", together with appropriate spaces for the voter to indicate the voter's intention with respect to the question, and
  - (b) such directions as to the manner in which a vote is to be recorded and returned to

the returning officer as the returning officer considers appropriate.

### **18 Distribution of ballot-papers**

As soon as practicable after the printing of the ballot-papers for a poll, the returning officer must send to each person included in the final roll for the poll:

- (a) a ballot-paper that is initialled by the returning officer (or by a person authorised by the returning officer) or that bears a mark prescribed as an official mark for the purposes of section 122A (3) of the *Parliamentary Electorates and Elections Act 1912*, and
- (b) an unsealed envelope addressed to the returning officer and bearing on the back the words "FULL NAME AND ADDRESS OF VOTER" and "SIGNATURE OF VOTER", together with appropriate spaces for the insertion of a name, address and signature.

### **19 Duplicate ballot-papers**

- (1) At any time before the close of the poll, the returning officer may issue to a voter a duplicate ballot-paper and envelope if the voter satisfies the returning officer by statutory declaration:
  - (a) that the original ballot-paper has been spoilt, lost or destroyed, and
  - (b) that the voter has not already voted in the poll to which the ballot-paper relates.
- (2) The returning officer is to maintain a record of all duplicate ballot-papers issued under this clause.

### **20 Recording of votes**

In order to vote in a poll, a person:

- (a) must record a vote on the ballot-paper in accordance with the directions shown on it, and
- (b) must place the completed ballot-paper (folded so that the vote cannot be seen) in the envelope addressed to the returning officer, and
- (c) must seal the envelope, and
- (d) must complete the person's full name and address on, and must sign, the back of the envelope, and
- (e) must return the envelope to the returning officer so as to be received before the close of the poll.

## **Division 5 The scrutiny**

### **21 Receipt of ballot-papers**

- (1) The returning officer must reject (without opening it) any envelope purporting to contain a ballot-paper if the envelope is not received by the returning officer before the close of the poll or is received unsealed.
- (2) The returning officer must examine the name on the back of each remaining envelope and, without opening the envelope:
  - (a) must accept the ballot-paper in the envelope and draw a line through the name on the final roll for the poll that corresponds to the name on the back of the envelope, if satisfied that a person of that name is included in the roll, or
  - (b) must reject the ballot-paper in the envelope, if not so satisfied or if a name, address or signature does not appear on the back of the envelope.
- (3) The returning officer may reject a ballot-paper without opening the envelope if, after making such inquiries as the returning officer thinks fit:
  - (a) the returning officer is unable to identify the signature on the back of the envelope, or
  - (b) it appears to the returning officer that the signature on the back of the envelope is not the signature of the person whose name and address appear on the back of the envelope.

### **22 Ascertaining result of poll**

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

### **23 Scrutineers**

Each organisation which, in the opinion of the returning officer, has an interest in the outcome of a poll is to be entitled to appoint, by notice in writing, a scrutineer to represent it at all stages of the scrutiny.

### **24 Scrutiny of votes**

- (1) The scrutiny of votes in a poll is to be conducted as follows:
  - (a) the returning officer is to produce, unopened, the envelopes containing the ballot-papers accepted for scrutiny,
  - (b) the returning officer is then to open each such envelope, extract the ballot-paper and (without unfolding it) place it in a locked ballot-box,

- (c) when the ballot-papers from all such envelopes have been placed in the ballot-box, the returning officer is then to unlock the ballot-box and remove the ballot-papers,
  - (d) the returning officer is then to examine each ballot-paper and reject those that are informal,
  - (e) the returning officer is then to proceed to count the votes and ascertain the result of the poll.
- (2) At the scrutiny of votes in a poll, a ballot-paper must be rejected as informal if:
- (a) it is neither initialled by the returning officer (or by a person authorised by the returning officer to do so) nor bears a mark prescribed as an official mark for the purposes of section 122A (3) of the *Parliamentary Electorates and Elections Act 1912*, or
  - (b) it has on it any mark or writing which the returning officer considers could enable any person to identify the voter who completed it, or
  - (c) it has not been completed in accordance with the directions shown on it.
- (3) However, a ballot-paper is not to be rejected as informal merely because of any mark or writing on it that is not authorised or required by this Regulation (unless it is a mark or writing referred to in subclause (2) (b)) if the returning officer considers that the voter's intention is clearly indicated on the ballot-paper.
- (4) The result of the poll is to be ascertained by determining the following:
- (a) the number of votes accepted in the poll,
  - (b) the number of votes in favour of the question on which the poll is being taken,
  - (c) the number of votes against that question,
  - (d) the number of votes rejected as informal.

## **25 Notification of result of poll**

As soon as practicable after the result of a poll has been ascertained, the returning officer is to notify the Minister and the appropriate officer in writing of the result of the poll.

## **Part 3 Elections**

### **Division 1 Preliminary**

#### **26 Definitions**

In this Part:

**appropriate officer** means:

- (a) in the case of an election to a vacancy as required by clause 6 (1) of Schedule 2 to the Act—the secretary of the board or committee in respect of which the election is to be held, or
- (b) in any other case—the Director-General.

**area** includes electoral district.

**calling of the ballot** for an election means the date on which a notice is first published for the election under clause 35.

**calling of the election** for an election means the date on which a notice is published for the election under clause 27.

**close of enrolments** for an election means the final time and date fixed by the returning officer for the close of enrolments in the election.

**close of exhibition of the roll** for an election means the final time and date fixed by the returning officer for the exhibition of the roll in the election.

**close of nominations** for an election means the final time and date fixed by the returning officer for the close of nominations in the election.

**close of the ballot** for an election means the final time and date fixed by the returning officer for the close of the ballot for the election.

**electoral district** means an electoral district appointed under section 9 (1) of the Act.

**final roll** for an election means the roll prepared by the returning officer under Division 5.

**preliminary roll** for an election means the roll provided to the returning officer under clause 34.

## **Division 2 Calling of the election**

### **27 Notice of election**

- (1) As soon as practicable after the Governor has directed that an election is required to be held in any area for any purpose, the returning officer must cause notice of that fact:
  - (a) to be sent to the appropriate officer, and
  - (b) to be published in a newspaper circulating generally throughout the electoral district.
- (2) The notice to be sent to the appropriate officer:



- (a) must state that an election is to be held in that area for that purpose, and
- (b) must fix a time and date for the close of nominations.

(3) The notice to be published in the newspaper:

- (a) must state that an election is to be held in that area for that purpose, and
- (b) must call for nominations of candidates, and
- (c) must specify the time and date for the close of nominations, and
- (d) must advise where nomination forms may be obtained and where nominations may be lodged, and
- (e) must advise where information is available as to the qualifications which entitle a producer to nominate a candidate for the election, and
- (f) must specify the method of counting the votes that will apply.

**Note—**

Clause 52 provides that the method of counting the votes in an election may be either the preferential method provided by the [Constitution Act 1902](#) or the “first past the post” method.

- (4) The close of nominations must not be earlier than 21 days, or later than 28 days, after the calling of the election.
- (5) The returning officer must ensure that information as to the qualifications which entitle a producer to nominate a candidate for the election is available as stated in the notification.
- (6) Information as to those qualifications may be made available as information forming part of a copy of any form provided by the returning officer for use in the nomination of a candidate.

## **28 Postponement of close of nominations**

- (1) The returning officer may postpone the close of nominations for a period not exceeding 14 days by a notice in a form similar to, and published in the same manner as, a notice calling for the nomination of candidates.
- (2) The power conferred on the returning officer by this clause may be exercised more than once in respect of an election.

## **Division 3 Nominations**

### **29 Eligibility for nomination**

Any person is eligible for nomination as a candidate for election.

### **30 Nomination of candidates**

- (1) A nomination of a candidate:
  - (a) must be in Form 4, and
  - (b) must be made by at least 6 persons (other than the candidate) who each have the prescribed qualifications, and
  - (c) must be lodged with the returning officer before the close of nominations.
- (2) If the returning officer is of the opinion that an insufficient number of the persons by whom a candidate has been nominated are qualified to nominate a candidate, the returning officer must, as soon as practicable, cause notice of that fact to be given to the candidate.
- (3) For the purpose of enabling the returning officer to form an opinion as to whether a person by whom a candidate in an election has been nominated is qualified to nominate a candidate, the returning officer may require the appropriate officer to furnish the returning officer with such information regarding the person as the returning officer may specify.
- (4) The appropriate officer must comply with such a requirement as soon as practicable.
- (5) A candidate who has been nominated in an election may withdraw the nomination at any time before the close of nominations by notice in writing addressed to the returning officer.

### **31 Uncontested elections**

If the number of persons who have been duly nominated as candidates by the close of nominations does not exceed the number of persons to be elected, each of those persons is taken to have been elected.

### **32 Contested elections**

If the number of persons who have been duly nominated as candidates by the close of nominations exceeds the number of persons to be elected, a ballot must be held.

### **33 Candidate information sheets**

- (1) At any time before the close of nominations, a candidate may submit to the returning officer a statutory declaration, in Form 5, containing information intended for inclusion in a candidate information sheet.
- (2) If more than the required number of persons have been nominated as candidates by the close of nominations, the returning officer must draw up a candidate information sheet consisting of the information contained in the statutory declarations submitted by the candidates.

- (3) In drawing up a candidate information sheet, the returning officer may omit (or, with the consent of the candidate, correct) so much of the information contained in a candidate's statutory declaration as the returning officer considers:
  - (a) to be false or misleading, or
  - (b) to be inappropriate for inclusion in the candidate information sheet, or
  - (c) to exceed the maximum amount of information that is suitable for inclusion in the candidate information sheet.
- (4) If a candidate does not submit a statutory declaration to the returning officer, the returning officer may, in drawing up a candidate information sheet, include in the sheet in respect of the candidate the words "NO INFORMATION RECEIVED".
- (5) The names of the candidates must be listed on the candidate information sheet in the same order as they are listed on the ballot-paper for the election.

## **Division 4 Calling of the ballot**

### **34 Preparation of preliminary roll**

- (1) As soon as practicable after it becomes apparent to the returning officer that a ballot is required to be held in respect of an election, the returning officer must cause notice of that fact to be sent to the appropriate officer.
- (2) The appropriate officer must provide the returning officer with:
  - (a) a preliminary roll of the persons who, in the opinion of the appropriate officer, are qualified to vote in the election, and
  - (b) an appropriately addressed label or an appropriately addressed envelope for each person whose name is included in that roll.
- (3) The preliminary roll:
  - (a) must contain the names (consecutively numbered and listed in alphabetical order) and addresses of the persons whose names are included in the roll, and
  - (b) must be certified by the appropriate officer in accordance with Form 1.
- (4) This clause does not apply to an election held as a consequence of an earlier election that has failed if a preliminary roll for the earlier election has already been provided to the returning officer.

### **35 Notice of ballot**

- (1) As soon as practicable after receiving the preliminary roll for the election, the returning officer must cause notice that an election is to be held:

- (a) to be published in at least one newspaper circulating generally throughout New South Wales, or
  - (b) to be sent by post to each person whose name is included in the preliminary roll for the election at the address shown on the roll.
- (2) The notice:
- (a) must state that a ballot is to be taken, and
  - (b) must fix a time and date for the close of exhibition of the roll, and
  - (c) must fix a time and date for the close of enrolments, and
  - (d) must fix a time and date for the close of the ballot, and
  - (e) must advise where copies of the preliminary roll will be exhibited, and
  - (f) must specify the qualifications that qualify a person to vote, and
  - (g) must advise where applications for enrolment and objections against enrolment may be lodged.
- (3) The notice must also state that it is compulsory for persons who are entitled to vote in the election to be enrolled, or to apply for enrolment, in the final roll for the election.
- (4) The close of exhibition of the roll must not be earlier than 14 days after the calling of the ballot.
- (5) The close of the ballot must not be earlier than 28 days after the calling of the ballot.
- (6) The close of enrolments must not be earlier than the close of exhibition of the roll or later than 14 days before the close of the ballot.

### **36 Postponement of ballot**

- (1) The returning officer may postpone (for a period not exceeding 14 days) the close of exhibition of the roll, the close of enrolments or the close of the ballot by a notice published in the same way as the notice stating that a ballot is to be held.
- (2) The power conferred on the returning officer by this clause may be exercised more than once in respect of an election.

## **Division 5 Preparation of final roll**

### **37 Exhibition of preliminary roll**

The returning officer must cause copies of the preliminary roll to be exhibited for public inspection:

- (a) at the places where applications for enrolment and objections against enrolment may be lodged, and
- (b) for a period of at least 14 days ending at the close of exhibition of the roll.

### **38 Qualifications for voting**

- (1) A person is qualified to vote in an election if, and only if, the person has the prescribed qualifications.
- (2) This clause does not entitle a person (whether in their own capacity or in their capacity as the representative of some other person):
  - (a) to vote more than once in any election, or
  - (b) to vote in 2 or more elections if elections are being held simultaneously in different electoral districts.

### **39 Enrolment compulsory**

It is compulsory for every person who is entitled to vote in an election to be enrolled, or to apply for enrolment, in the final roll for the election.

### **40 Enrolment of representatives**

- (1) If, in the opinion of the returning officer, a primary product is actually grown or produced for sale:
  - (a) on behalf of a corporation—the corporation is taken to be enrolled, or to apply for enrolment, in the final roll for an election if, and only if, a nominee of the corporation is so enrolled, or so applies for enrolment, in that roll as the representative of the corporation, or
  - (b) on behalf of a partnership—the partnership is taken to be enrolled, or to apply for enrolment, in the final roll for an election if, and only if, a nominee of the partnership is so enrolled, or so applies for enrolment, in that roll as the representative of the partnership, or
  - (c) by trustees or by legal personal representatives (whether as agents, administrators or executors or otherwise) on behalf of a person or the estate of a person—the person or estate is taken to be enrolled, or to apply for enrolment, in the final roll for an election if, and only if, a nominee of those trustees or representatives is so enrolled, or so applies for enrolment, in that roll as the representative of the person or estate.
- (2) Only one person may be nominated to vote in the election as a representative of the corporation, partnership, person or estate concerned.
- (3) A nominee must be a natural person who is not already enrolled in the final roll for the

election in some other capacity.

- (4) A representative of a corporation, partnership, person or estate is taken to be a producer for the purposes of enrolment and of any election in which the corporation, partnership, person or estate is qualified to vote.
- (5) In this clause, a reference to a partnership includes a reference to the parties to a share-farming agreement and to any group of persons who, in the opinion of the returning officer, are engaged in a single enterprise in the growing or production for sale of a primary product.
- (6) In forming such an opinion in respect of a group of persons, the returning officer may ignore the existence of any legal entity that consists of or includes persons who form part of the group.
- (7) For the purpose of enabling the returning officer to form an opinion as to whether a primary product is actually grown or produced for sale on behalf of a corporation or a partnership or by trustees or legal personal representatives on behalf of a person or an estate of a person, the returning officer may require the appropriate officer to furnish the returning officer with such information as the returning officer may specify.

#### **41 Applications for enrolment by persons not already enrolled**

- (1) A person whose name does not appear on the preliminary roll for an election may apply for enrolment in the final roll for the election.
- (2) The application must be in Form 2 and must be lodged with the returning officer before the close of enrolments.
- (3) On receipt of the application, the returning officer:
  - (a) if satisfied that the applicant is qualified to vote, must accept the application and enter the name and address of the applicant in the final roll, or
  - (b) if not so satisfied, must reject the application and inform the applicant in writing that the application has been rejected, or
  - (c) if the application is not in the proper form or is incomplete, must return the application for correction or completion and consider the duly corrected or completed application in accordance with this clause.
- (4) For the purpose of enabling the returning officer to form an opinion as to whether a person is qualified to vote, the returning officer may require the appropriate officer to furnish the returning officer with such information regarding the person as the returning officer may specify.

## **42 Objections to enrolment**

- (1) Before the close of enrolments, the returning officer and any person who is qualified to vote in an election may object to the inclusion of the name of any person in the final roll.
- (2) An objection:
  - (a) must be in Form 3, and
  - (b) must state the grounds on which it is made, and
  - (c) must be signed by the objector, and
  - (d) must be lodged with the returning officer.
- (3) The returning officer must send particulars of an objection to the person to whom the objection relates.
- (4) The person to whom an objection relates may lodge a written reply with the returning officer within 14 days after the date on which particulars of the objection were sent to that person.
- (5) The returning officer must consider each objection, and any reply received within that 14 day period, and may make such inquiries as the returning officer thinks fit.
- (6) The returning officer may accept or reject an objection.
- (7) If the returning officer accepts an objection, the returning officer must exclude from the final roll for the election the name of the person to whom the objection relates and must inform that person and the objector, in writing, that the person's name is so excluded.
- (8) If the returning officer rejects an objection, the returning officer must notify the person to whom the objection relates and the objector, in writing, that the returning officer has rejected the objection.
- (9) The returning officer may require a person who lodges an objection, or who replies to an objection, to verify the objection or reply by statutory declaration.
- (10) For the purpose of enabling the returning officer to make a decision to accept or reject an objection to the inclusion of the name of a person in the final roll, the returning officer may require the appropriate officer to furnish the returning officer with such information regarding the person as the returning officer may specify.

## **43 Postponement of ballot not to affect final roll**

The validity of the final roll for an election is not affected by the postponement of the close of the ballot by a notice published after the close of exhibition of the roll, and the roll

remains the final roll for the election.

## **Division 6 The ballot**

### **44 Printing of ballot-papers**

- (1) As soon as practicable after the close of enrolments in an election, the returning officer:
  - (a) must determine the order in which the candidates' names are to be listed on a ballot-paper by means of a ballot held in accordance with the procedure prescribed for the purposes of section 82A of the *Parliamentary Electorates and Elections Act 1912*, and
  - (b) must cause sufficient ballot-papers to be printed to enable a ballot-paper to be sent to each person included in the final roll for the election, and
  - (c) if a candidate information sheet has been drawn up, must cause sufficient copies to be printed so that a copy may be sent to each person included in that roll.
- (2) A ballot-paper for an election must contain:
  - (a) the names of the candidates arranged in the order determined in accordance with subclause (1) (a), with a small square set opposite each name, and
  - (b) if the returning officer considers that the names of 2 or more of the candidates are so similar as to cause confusion, such other matter as the returning officer considers will distinguish between the candidates, and
  - (c) such directions as to the manner in which a vote is to be recorded and returned to the returning officer as the returning officer considers appropriate.
- (3) In the case of an election where votes are to be counted as provided by Part 2 of the Sixth Schedule to the *Constitution Act 1902*, the directions to voters must include a direction that:
  - (a) the voter must record a vote for at least the number of candidates to be elected by placing consecutive numbers (beginning with the number "1" and ending with the number equal to the number of candidates to be elected) in the squares set opposite the candidates' names in the order of the voter's preferences for them, and
  - (b) the voter may, but is not required to, vote for additional candidates by placing consecutive numbers (beginning with the number next higher than the number of candidates to be elected) in the square set opposite the candidates' names in the order of the voter's preferences for them.
- (4) In the case of an election where votes are to be counted in accordance with the "first



past the post” method, the directions to voters must include a direction that:

- (a) the voter must, subject to paragraph (b), place a cross in the square set opposite the name of each candidate that the voter wishes to vote for, and
- (b) the voter must not vote for more candidates than there are vacancies to be filled at the election.

#### **45 Distribution of ballot-papers**

As soon as practicable after the printing of the ballot-papers for an election, the returning officer must send to each person included in the final roll for the election:

- (a) a ballot-paper that is initialled by the returning officer (or by a person authorised by the returning officer) or that bears a mark prescribed for the purposes of section 122A (3) of the *Parliamentary Electorates and Elections Act 1912*, and
- (b) an unsealed reply-paid envelope addressed to the returning officer and bearing on the back the words “NAME AND ADDRESS OF VOTER” and “SIGNATURE OF VOTER”, together with appropriate spaces for the insertion of a name, address and signature, and
- (c) if applicable, a candidate information sheet.

#### **46 Duplicate ballot-papers**

- (1) At any time before the close of the ballot, the returning officer may issue to a voter a duplicate ballot-paper and envelope if the voter satisfies the returning officer by statutory declaration:
  - (a) that the original ballot-paper has been spoiled, lost or destroyed, and
  - (b) that the voter has not already voted in the election to which the ballot-paper relates.
- (2) The returning officer must maintain a record of all duplicate ballot-papers issued under this clause.

#### **47 Recording of votes**

In order to vote in an election, a person:

- (a) must record a vote on the ballot-paper in accordance with the directions shown on it, and
- (b) must place the completed ballot-paper (folded so that the vote cannot be seen) in the envelope addressed to the returning officer, and
- (c) must seal the envelope, and

- (d) must complete the person's full name and address on, and must sign, the back of the envelope, and
- (e) must return the envelope to the returning officer so as to be received before the close of the ballot.

## **Division 7 The scrutiny**

### **48 Receipt of ballot-papers**

- (1) The returning officer must reject (without opening it) any envelope purporting to contain a ballot-paper if the envelope is not received before the close of the ballot or is received unsealed.
- (2) The returning officer must examine the name on the back of the envelope and, without opening the envelope:
  - (a) must accept the ballot-paper in the envelope and draw a line through the name on the roll that corresponds to the name on the back of the envelope, if satisfied that a person of that name is included in the final roll for the election, or
  - (b) must reject the ballot-paper in the envelope, if not so satisfied or if a name, address or signature does not appear on the back of the envelope.
- (3) The returning officer may reject a ballot-paper without opening the envelope if, after making such inquiries as the returning officer thinks fit:
  - (a) the returning officer is unable to identify the signature on the back of the envelope, or
  - (b) it appears to the returning officer that the signature on the back of the envelope is not the signature of the person whose name and address appear on the back of the envelope.

### **49 Ascertaining result of ballot**

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

### **50 Scrutineers**

Each candidate in a ballot is entitled to appoint, by notice in writing, a scrutineer to represent the candidate at all stages of the scrutiny.

### **51 Scrutiny of votes**

- (1) The scrutiny of votes in a ballot is to be conducted as follows:
  - (a) the returning officer is to produce, unopened, the envelopes containing the ballot-

papers accepted for scrutiny,

- (b) the returning officer is then to open each such envelope, extract the ballot-paper and (without unfolding it) place it in a locked ballot-box,
- (c) when the ballot-papers from all the envelopes have been placed in the ballot-box, the returning officer is then to unlock the ballot-box and remove the ballot-papers,
- (d) the returning officer is then to examine each ballot-paper and reject those that are informal,
- (e) the returning officer is then to proceed to count the votes and ascertain the result of the election.

(2) At the scrutiny of votes in a ballot, a ballot-paper must be rejected as informal if:

- (a) it is neither initialled by the returning officer (or by a person authorised by the returning officer in that behalf) nor bears a mark prescribed as an official mark for the purposes of section 122A (3) of the *Parliamentary Electorates and Elections Act 1912*, or
- (b) it has on it any mark or writing which the returning officer considers could enable any person to identify the voter who completed it, or
- (c) it has not been completed in accordance with the directions shown on it.

(3) A ballot-paper is not to be rejected as informal:

- (a) merely because of any mark or writing on it that is not authorised or required by this Regulation (not being a mark or writing referred to in subclause (2) (b)) if, in the opinion of the returning officer, the voter's intention is clearly indicated on the ballot-paper, or
- (b) if the voter has recorded a vote by placing in one square the number "1":
  - (i) merely because the same preference (other than a first preference) has been recorded on the ballot-paper for more than one candidate, or
  - (ii) merely because there is a break in the order of preferences recorded on the ballot-paper.

## **52 Counting of votes**

(1) If there is 1 person to be elected in the election:

- (a) the method of counting the votes so as to ascertain the result of the election is to be the method specified in the notice referred to in clause 27, being either:
  - (i) the method provided by Part 2 of the Seventh Schedule to the *Constitution Act 1902*, or

- (ii) the “first past the post” method, that is, the candidate with the most votes is taken to be elected, and
  - (b) for the purpose of applying the provisions of Part 2 of the Seventh Schedule to the *Constitution Act 1902* to the election (if required), a reference in those provisions to the returning officer is to be read as a reference to the returning officer under this Regulation.
- (2) If there are 2 or more persons to be elected in the election:
- (a) the method of counting the votes so as to ascertain the result of the election is to be the method specified in the notice referred to in clause 27, being either:
    - (i) the method provided by Part 2 of the Sixth Schedule to the *Constitution Act 1902*, or
    - (ii) the “first past the post” method, that is, the candidates with the most votes are taken to be elected, and
  - (b) for the purpose of applying the provisions of Part 2 of the Sixth Schedule to the *Constitution Act 1902* to the election (if required):
    - (i) a reference in those provisions to the Council returning officer is to be read as a reference to the returning officer under this Regulation, and
    - (ii) the quota referred to in those provisions is to be determined by dividing the number of first preference votes for all candidates by 1 more than the number of persons to be elected and by increasing the quotient so obtained (disregarding any remainder) by 1.

### **53 Notice of result of election**

As soon as practicable after a candidate in an election has been elected, the returning officer must notify the Minister and the appropriate officer, in writing, of the name of the candidate elected.

## **Part 4 Boards and Committees**

### **Division 1 General provisions**

#### **54 Alternate members for elected members**

- (1) An elected member of a board or committee may appoint an alternate to act in the office of the elected member:
  - (a) during the illness of the member, if the illness is likely to prevent the member from attending meetings of the board or committee for at least 4 months, or
  - (b) during the absence of the member, if the absence is likely to last for at least 4

months and is the subject of leave granted by the board or committee.

- (2) The appointment of an alternate member:
  - (a) must be in writing addressed to the secretary to the board or committee, and
  - (b) must contain the name, address and period of appointment of the alternate member, and
  - (c) must be signed and dated by the elected member.
- (3) The board or committee must advise the Minister of any such appointment of an alternate member.
- (4) The power of an elected member to appoint a person as an alternate member may be exercised any number of times during the term of office of the elected member.
- (5) An elected member may at any time remove from office an alternate member appointed by the elected member.
- (6) An alternate member ceases to hold office:
  - (a) on being removed from office by the elected member, or
  - (b) on the elected member ceasing to be a member, or
  - (c) on the expiry of the period of the alternate member's appointment,whichever first occurs.

#### **55 Common seal of board or committee**

- (1) The common seal of a board or committee must be kept by the secretary to the board or committee in such place as the board or committee may direct.
- (2) The common seal of a board or committee may be affixed to a document only:
  - (a) in the presence of at least 2 members of the board or committee and the secretary to the board or committee, and
  - (b) with an attestation by the signatures of those members and the secretary of the fact of the affixing of the common seal.

#### **56 Signing of documents not under seal**

Any document requiring authentication by a board or committee may be sufficiently authenticated without the common seal of the board or committee if it is signed by:

- (a) at least one member of the board or committee and the secretary to the board or committee, or

- (b) at least 2 members of the board or committee.

## **Division 2 Special provisions for particular boards and committees**

### **57 Rice Marketing Board may exempt unsuitable rice from automatic vesting**

For the purposes of section 57 (1) (d) of the Act, sales and purchases or receipts of rice whose quality is such as to make it unsuitable for milling are prescribed as sales and purchases or receipts which the Rice Marketing Board for the State of New South Wales may exempt from the operation of section 56 of the Act.

## **Part 5 General**

### **58 Decisions of returning officer final**

If the returning officer is permitted or required by the Act or this Regulation to make a decision on any matter relating to the taking of a ballot in any poll or election, the decision of the returning officer on that matter is final.

### **59 Death of a candidate**

If a candidate dies after the close of nominations and before the close of the ballot:

- (a) the returning officer is to cause notice of the death to be published in the Gazette, and
- (b) all proceedings taken after the Minister notified the returning officer that the election was required to be held are of no effect and must be taken again.

### **60 Concurrent polls and elections**

Where the same voting qualifications apply in respect of a poll and an election:

- (a) a single roll may be prepared and used for the purposes of both the poll and the election, and
- (b) an application for enrolment in that roll may be made under clause 13 or 41, and
- (c) an objection against the inclusion in that roll of the name of any person may be made under clause 14 or 42.

### **61 Offences**

A person must not:

- (a) vote, or attempt to vote, more than once in any poll or election, or
- (b) vote, or attempt to vote, in any poll or election in which the person is not entitled to vote, or

- (c) make a false or wilfully misleading statement (not being a statement verified by statutory declaration):
  - (i) to the returning officer in connection with any poll or election, or
  - (ii) in any document that the person furnishes for the purposes of any poll or election, or
- (d) apply for enrolment in respect of any poll or election in respect of which the person is already enrolled.

Maximum penalty: 0.1 penalty unit.

## **62 Notice of claim**

For the purposes of section 59 (3) of the Act:

- (a) the prescribed form for a notice of claim referred to in that subsection is Form 6, and
- (b) the prescribed particulars to be included in the notice are the particulars required by Form 6.

## **63 Duties and liability of certain persons**

For the purposes of section 151 (3) (b) of the Act (persons in prescribed positions to act honestly and exercise a reasonable degree of care and diligence), the position of secretary to a board or committee is a prescribed position.

## **64 Evidentiary provisions**

For the purposes of section 158 (1) (e) of the Act (certificate purporting to be signed by prescribed officer to be evidence), the prescribed officer of a board or committee is the secretary to the board or committee.

## **65 Savings and transitional**

- (1) Any act, matter or thing that, immediately before the repeal of the *Marketing of Primary Products (Polls and Elections) Regulation 2000* or the *Marketing of Primary Products (Boards and Committees) Regulation 2000*, had effect under either Regulation continues to have effect under this Regulation.
- (2) Clause 27 (3) (f) of this Regulation (which requires the publication of the method of counting the votes that will apply in an election) does not apply in respect of any election that is called before the commencement of this Regulation. Votes in any such election must be counted as provided for by the *Marketing of Primary Products (Polls and Elections) Regulation 2000* (as if it had not been repealed).

## Schedule 1 Qualifications for voting

(Clause 4)

### 1 Definitions

In this Schedule:

**current season**, in relation to a poll or an election, means the season during which the calling of the poll or election occurs.

**previous season** means the period of 12 months commencing on 1 January in any year.

### 2 Rice

A producer of rice has the prescribed qualifications for the purposes of any poll or election relating to rice if the producer has:

- (a) during the current season, or
- (b) during the previous season,

sown to rice any land, within the area to which the poll or election relates, for the purpose of growing or producing rice for sale.

## Schedule 2 Forms

(Clause 3 (2) (a))

### Form 1 Certificate

*(Marketing of Primary Products Regulation 2005)*

(Clauses 6 and 34)

I certify that this roll contains the full names (consecutively numbered and listed in alphabetical order) and addresses of those producers who, in my opinion, are entitled to vote in the poll\*/election\* in relation to which this roll has been prepared.

The first and last entries in the roll are as follows:

First entry: No:

Name:

Address:

Last entry: No:

Name:

Address:

Dated:

Signed:

\* Delete whichever is inapplicable.

### Form 2 Application for enrolment

*(Marketing of Primary Products Regulation 2005)*

(Clauses 13 and 41)

Surname:



Given names:

Postal Address:

Postcode:

Telephone No:

Address of property on which the primary product the subject of the poll\*/election\* is actually grown or produced for sale:

Local government area in which the property is situated:

I apply to be enrolled in the final roll for the following poll\*/election\* and in any subsequent poll or election [specify the poll\*/election\* to which the application relates]:

I am applying for enrolment:

- (a) \* as the sole producer of the primary product,
- (b) \* as the representative of a corporation on behalf of which the primary product is actually grown or produced for sale,
- (c) \* as the representative of a partnership on behalf of which the primary product is actually grown or produced for sale,
- (d) \* as the representative of the trustees or legal personal representatives of a person or estate on behalf of whom or which the primary product is actually grown or produced for sale.

Particulars of corporation\*/partnership\*/trustee\*/legal personal representative\* in respect of whom or which the applicant is the representative (see paragraphs (b), (c) and (d) above)\*:

Name:

Postal address:

Postcode:

I declare that I have\*/ the producer that I represent has\*, as at the calling of the poll\*/election\*, the prescribed qualifications (as specified in Schedule 1 to the [Marketing of Primary Products Regulation 2005](#)) in respect of the primary product the subject of the poll\*/election\*.

I further declare that, to the best of my knowledge, the information contained in this application is true.

Dated:

Signed:

\* Delete whichever is inapplicable.

### **Form 3 Objection to enrolment**

*(Marketing of Primary Products Regulation 2005)*

(Clauses 14 and 42)

I object to the inclusion in the final roll for the following poll\*/election\* [specify the poll\*/election\* to which the objection relates]:

of the name of [name in full] of [postal address]

This objection is based on the following grounds [specify the grounds of the objection]:

Name of objector:

Postal address:

Postcode:

Telephone No.:

Dated:

Signed:

\* Delete whichever is inapplicable.

### **Form 4 Nomination of candidate**

*(Marketing of Primary Products Regulation 2005)*

(Clause 30)

We nominate [*name in full*] of [*postal address*] as a candidate for the following election [*specify the election to which the nomination relates and the area or electoral district in which the election is to be held*]:

We declare that we are each entitled to vote in the election.

Name in full:            Address:            Signature:

1

2

3

4

5

6

**Note—**

This nomination must be completed by not less than 6 persons (other than the candidate), each of whom has the prescribed qualifications (as specified in Schedule 1 to the *Marketing of Primary Products Regulation 2005*) in respect of the election.

I [*name*] consent to being a candidate at the election to which this nomination relates.

Postal address:

Postcode:

Telephone No:

Date of birth:

Dated:

Signed:

**Form 5 Statutory declaration**

*(Marketing of Primary Products Regulation 2005)*

(Clause 33)

I, [*name*] of [*address*] do solemnly and sincerely declare that:

1 My full name is

2 My residential address and postcode is

3 My date of birth is

4 I am self-employed\*/employed by [*employer name*]\* as [*specify nature of employment*]

5 I hold the following qualifications (academic/trade/professional):

6 I am a member of the following organisations:

7 I hold the following offices (other than employment):

8 [*see Note*]

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the *Oaths Act 1900*.

Declared at            this            day of            20

Before me:

Justice of the Peace

[signature]

**Note—**

A candidate may include further information relating to the candidacy. Such information should not exceed 4 lines of typescript.

\* Delete whichever is inapplicable.

**Form 6 Claim for account of payment due**

*(Marketing of Primary Products Regulation 2005)*

(Clause 62)

Name of board:

Address:

Name of claimant:

Address:

Nature of encumbrance:

Nature of commodity encumbered:

Date of delivery of commodity to board:

Name of person whose commodity is encumbered:

Address:

Name of person having the benefit of the encumbrance:

Address:

Particulars of any loan secured by the encumbrance, including the period of the loan and the period and amounts of instalments payable under the loan:

Amount due and unpaid under encumbrance:

Date of registration of encumbrance:

[signature of claimant]