

1991—No. 230

**DRIED FRUITS ACT 1939—REGULATION**

(Relating to the election of members of the Dried Fruits Board)

NEW SOUTH WALES



*[Published in Gazette No. 77 of 10 May 1991]*

HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Dried Fruits Act 1939, has been pleased to make the Regulation set forth hereunder.

IAN ARMSTRONG

Minister for Agriculture and Rural Affairs.

The Dried Fruits Regulations are amended:

- (a) by omitting from Regulation 3 (1) the definitions of “candidate”, “election”, “extraordinary election” and “general election”;
- (b) by omitting Part 12 and by inserting instead the following Part:

**PART 12—ELECTION OF BOARD MEMBERS**

**Division 1—Preliminary**

**Definitions**

46. In this Part:

“**calling of the ballot**”, in relation to an election, means the date on which a notification is first published in respect of an election under Regulation 56;

“**close of enrolments**”, in relation to an election, means the time and date for the close of enrolments in the election fixed by the notification:

- (a) except as provided. by paragraph (b)—published under Regulation 56; or

- (b) if the returning officer fixes a later time and date for the close of enrolments in the election than that fixed by a previous notification—last published under Regulation 57;

**“close of exhibition of the roll”**, in relation to an election, means the time and date for the close of exhibition of the roll in the election fixed by the notification:

- (a) except as provided by paragraph (b)—published under Regulation 56; or
- (b) if the returning officer fixes a later time and date for the close of exhibition of the roll in the election than that fixed by a previous notification—last published under Regulation 57;

**“nominations”**, in relation to an election, means the time and date for the close of nominations in respect of the election fixed by the notification:

- (a) except as provided by paragraph (b)—published under Regulation 47; or
- (b) if the returning officer fixes a later time and date for the close of nominations in respect of the election than that fixed by a previous notification—last published under Regulation 48;

**“close of the ballot”** in relation to an election, means the time and date for the close of the ballot in respect of the election fixed by the notification:

- (a) except as provided by paragraph (b)—published under Regulation 56; or
- (b) if the returning officer fixes a later time and date for the close of the ballot in respect of the election than that fixed by a previous notification—last published under Regulation 57;

**“election”** means an election under section 7 or 8 of the Act;

**“final” roll**, in relation to an election, means the roll prepared for the election by the returning officer under Division 5;

**“preliminary roll”**, in relation to an election, means the roll furnished for the election under Regulation 55 to the returning officer;

**“returning officer”** means

- (a) the Electoral Commissioner for New South Wales; or

- (b) a person employed in the office of, and nominated for the purpose of exercising the functions of, a returning officer by the Electoral Commissioner.

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

### **Notification of election**

47. (1) The returning officer must, as soon as practicable after having been notified in writing by or on behalf of the Minister that an election is required to be held:

- (a) cause to be published in at least 1 newspaper circulating generally throughout New South Wales a notification:
  - (i) stating that an election is to be held; and
  - (ii) calling for nominations of candidates; and
  - (iii) fixing the time and date for the close of nominations; and
  - (iv) specifying the places where nominations may be lodged; and
  - (v) specifying the qualifications which entitle a person to nominate a candidate; and
- (b) notify the Secretary of the Board in writing that an election is to be held and of the time and date fixed under paragraph (a) for the close of nominations.

(2) The date fixed by a notification under this Regulation for the close of nominations is to be not less than 21 days nor more than 28 days after the date on which the notification is first published.

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

48. (1) The returning officer may, by a notification in a form similar to, and published in the same manner as, a notification referred to in Regulation 47, postpone (for a period not exceeding 14 days) the close of nominations in an election if, in the returning officer's opinion, it is desirable to do so.

(2) The power conferred on the returning officer by this Regulation may be exercised more than once in respect of an election.

**Division 3—Nominations****Qualifications for nominating candidates**

49. A person is qualified to nominate a candidate for an election if, and only if, the person is qualified to vote in the election.

**Nomination of candidates**

50. (1) A nomination of a candidate must:

- (a) be in Form 16; and
- (b) be made by not less than 2 persons (other than the candidate) who are qualified to nominate a candidate; and
- (c) contain a statement, signed by the person nominated, stating that he or she consents to the nomination, and that he or she will act as a member of the Board if elected; and
- (d) 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 the candidate, the returning officer must, as soon as practicable after receiving the nomination, 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 is qualified to nominate the candidate, the returning officer may require the Secretary of the Board to furnish the returning officer with such information regarding the person as the returning officer may specify.

(4) The Secretary is required to comply with such a requirement as soon as practicable.

**Withdrawal of nomination**

51. A candidate who has been nominated in an election may, by notice in writing addressed to the returning officer, withdraw the nomination at any time before the close of nominations.

**Uncontested elections**

52. If, by the close of nominations in an election, only one person has been nominated as a candidate, that person is taken to have been elected.

**Contested elections**

53. If, by the close of nominations in an election, 2 or more persons have been nominated as candidates, a ballot must be held.

**Candidate information sheets**

54. (1) A candidate may, at any time before the close of nominations, submit to the returning officer a statutory declaration, in Form 16A, containing information intended for inclusion in a candidate information sheet.

(2) If, by the close of nominations, more than one person has been nominated as a candidate, the returning officer must draw up a candidate information sheet consisting of the information contained in the statutory declarations submitted by the candidates.

(3) If the returning officer considers that the information contained in such a statutory declaration:

- (a) is not appropriate for inclusion in a candidate information sheet; or
- (b) is false or misleading in a material particular; or
- (c) is of a length greater than that permitted by Form 16A, the returning officer may, in drawing up the candidate information sheet:
  - (d) omit the information; or
  - (e) omit or rectify the particular; or
  - (f) reduce the length of the information.

(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”.

**Division 4—Calling of the ballot****Preparation of preliminary roll**

55. (1) The returning officer must, 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, notify the Secretary of the Board:

- (a) that a ballot is to be held in respect of the election; and

- (b) that the Secretary is required to furnish the returning officer, within such time after the calling of the ballot in the election as may be specified in the notice, with:
  - (i) a preliminary roll of the persons who, in the opinion of the Secretary, are qualified to vote in the election; and
  - (ii) an appropriately addressed label or an appropriately addressed envelope for each person whose name is included in that roll.
- (2) The Secretary must comply with such a requirement as soon as practicable.
- (3) A preliminary roll must:
  - (a) 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) be certified, in Form 16B, by the Secretary.
- (4) This Regulation does not apply to an election which is held as a consequence of an earlier election which has failed but in respect of which the relevant preliminary roll has been furnished to the returning officer under this Regulation.

### **Notification of ballot**

56. (1) The returning officer must, as soon as practicable after receiving the preliminary roll for an election:
- (a) cause to be published in at least 1 newspaper circulating generally throughout New South Wales, or send by post to each person whose name is included in the preliminary roll for the election at the address shown on the roll, a notification:
    - (i) stating the purpose for which the election is being held; and
    - (ii) stating that a ballot is to be taken; and
    - (iii) fixing the time and date for the close of exhibition of the roll; and
    - (iv) specifying the places where copies of the preliminary roll will be exhibited; and
    - (v) fixing the time and date for the close of enrolments; and
    - (vi) specifying the qualifications which entitle a person to vote; and.

**1991—No. 230**

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- (vii) specifying the places where applications for enrolment and objections against enrolment may be lodged; and
- (viii) fixing the time and date for the close of the ballot; and
- (b) cause copies of the preliminary roll to be exhibited for public inspection:
  - (i) for a period of not less than 14 days ending at the close of exhibition of the roll; and
  - (ii) at the places specified under paragraph (a) (iv).
- (2) The date fixed by a notification under this Regulation:
  - (a) for the close of exhibition of the roll—must not be earlier than 14 days after the calling of the ballot; and
  - (b) for the close of the ballot—must not be earlier than 28 days after the calling of the ballot; and
  - (c) for the close of enrolments—must not be earlier than the close of exhibition of the roll and not later than 14 days before the close of the ballot.

**Postponement of ballot**

57. (1) The returning officer may, by notification in a form similar to, and published in the same manner as, a notification under Regulation 56, 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 if, in the returning officer's opinion, it is desirable to do so.

(2) The power conferred on the returning officer by this Regulation may be exercised more than once in respect of any election.

**Division 5—Preparation of the final roll****Enrolment of representatives of corporate growers etc.**

58. (1) If, in the opinion of the returning officer, dried fruits are produced:

- (a) by a corporation or partnership (not being a partnership arising from the existence of a written sharefarming agreement between 2 or more growers); or

- (b) 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,

a right to enrolment for the purposes of an election may be exercised by the corporation, partnership or other grower concerned by the nomination of a person, evidenced in a manner satisfactory to the returning officer, by the grower to vote on the grower's behalf.

(2) A nominee under this Regulation must be a natural person who is not already on the roll for the election in some other capacity.

(3) In this Regulation, a reference to a partnership includes a reference to any group of persons who, in the opinion of the returning officer, are engaged in a single enterprise in the production of dried fruits.

(4) 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.

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

59. (1) An application for enrolment in respect of an election (being an application by a person whose name does not appear on the preliminary roll for the election) must:

- (a) be in Form 16C; and
- (b) be lodged at the office of the returning officer before the close of enrolments.

(2) On receipt of such an application for enrolment, the returning officer must:

- (a) if satisfied that the applicant is entitled to enrolment, accept the application and enter the name and address of the applicant in the final roll for the election; or
- (b) if not so satisfied, 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:
  - (i) return the application for correction or completion; and



- (ii) if the application is corrected or completed and returned within such time as the returning officer may specify, consider the corrected or completed application in accordance with this clause.

### **Objections to enrolment**

60. (1) The returning officer, and any person who is qualified to vote in an election, may, before the close of enrolments, object to the inclusion of the name of any person in the final roll.

(2) An objection must:

- (a) be in Form 16D; and
- (b) state the grounds on which the objection is made; and
- (c) be signed by the person by whom the objection is made; and
- (d) except if it is signed by the returning officer, be lodged with the returning officer.

(3) The returning officer must forward particulars of an objection to the person to whom the objection relates.

(4) The person to whom an objection relates may lodge a reply, in writing, with the returning officer with 14 days after the date on which particulars of the objection were forwarded 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, after complying with clause (5), accept or refuse to accept 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 the person and the objector, in writing, that the person's name is so excluded.

(8) If the returning officer does not accept an objection, the returning officer must notify the person to whom the objection relates and the objector that the returning officer has not accepted the objection.

(9) The returning officer may require a person who lodges an objection, or who replies to an objection under clause (4), to verify the objection or reply by statutory declaration.

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

61. A notification published pursuant to Regulation 57 after the close of enrolments in an election, being a notification by which the close of the ballot is postponed, does not affect the validity of a final roll for the election prepared in accordance with this Division and, despite the publication of the notification, the roll so prepared remains the final roll for the election.

**Division 6—The ballot****Printing of ballot—papers**

62. (1) The returning officer must, as soon as practicable after the close of enrolments in an election:

- (a) 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) cause sufficient ballot-papers to be printed so that a ballot-paper may be forwarded to each person whose name is included in the final roll for the election; and
- (c) if a candidate information sheet has been drawn up under Regulation 54, cause sufficient copies to be printed so that a copy may be forwarded to each person whose name is included in the final roll.

(2) A ballot-paper for an election must contain:

- (a) the names of the candidates arranged in the order determined in accordance with clause (1) (a) with a small square set opposite each name; and
- (b) if, in the opinion of the returning officer, the names of 2 or more of the candidates are so similar as to cause confusion, such other matter as will, in the opinion of the returning officer, distinguish between those candidates; and
- (c) such directions as to the manner in which a vote is to be recorded and returned to the returning officer as are required by clause (3) and as the returning officer considers appropriate.

(3) The directions to voters must include a direction that:

- (a) the voter 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 voter desires to give his or her first preference vote; and

- (b) the voter may, if the voter so desires, 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 voter’s preferences for them.

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

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

- (a) a ballot-paper initialled by the returning officer or by a person authorised by the returning officer in that behalf; and
- (b) an unsealed 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 the person’s name, address and signature; and
- (c) where applicable, a candidate information sheet drawn up under Regulation 54.

### **Duplicate ballot-papers**

64. (1) If any voter to whom a ballot-paper has been forwarded under Regulation 63 satisfies the returning officer by statutory declaration that the ballot-paper has been spoiled, lost or destroyed, and that the voter has not already voted in the election to which the ballot-paper relates, the returning officer may, at any time before the close of the ballot, issue to the voter a new ballot-paper and envelope.

(2) The returning officer is to maintain a record of all duplicate ballot-papers so issued.

### **Recording of votes**

65. A person whose name is included in the final roll for an election and who wishes to vote in the election must, on receipt of a ballot-paper:

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

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

### **Division 7—The scrutiny**

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

66. (1) In any ballot, the returning officer must reject any envelope purporting to contain a ballot-paper if the envelope:

- (a) is not received by the returning officer before the close of the ballot; or
- (b) is unsealed,

without opening the envelope or inspecting the ballot-paper.

(2) On receipt, before the close of the ballot, of an envelope purporting to contain a ballot-paper, the returning officer is to examine the name on the back of the envelope and:

- (a) if the returning officer is satisfied that a person of that name is included on the roll for the election, accept the ballot-paper in the envelope for scrutiny without opening the envelope and draw a line through that person's name on the roll; or
- (b) if the returning officer is not so satisfied, or if a name, address or signature does not appear on the back of the envelope, reject the ballot-paper in the envelope without opening the envelope.

(3) If:

- (a) the returning officer is unable to identify the signature on the back of any such 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,

the returning officer may make such inquiries as the returning officer thinks fit and if, after making those inquiries, the returning officer is satisfied that the signature is not the signature of that person, reject any ballot-paper in the envelope without opening the envelope.

**Ascertaining result of ballot**

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

**Scrutineers**

68. 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.

**Scrutiny of votes**

69. (1) 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, in the opinion of the returning officer, 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.

(2) A ballot-paper is not to be rejected as informal merely because of any mark or writing on it which is not authorised or required by this Regulation (not being a mark or writing referred to in clause (1) (b)) if, in the opinion of the returning officer, the voter's intention is clearly indicated on the ballot-paper.

(3) 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 under Regulation 66 (2) (a) in respect of the ballot, other than any envelope purporting to contain a ballot-paper rejected under Regulation 66 (3);
- (b) the returning officer is then to open each envelope, extract the ballot-paper and (without unfolding it) place it in a locked ballot-box;

- (c) when the ballot-papers from all the opened 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 which are informal;
- (e) the returning officer is then to proceed to count the votes and ascertain the result of the election in accordance with Regulation 70.

**Counting of votes**

70. (1) The method of counting the votes to ascertain the result of an election is as provided in Part 2 of the Seventh Schedule to the Constitution Act 1902.

(2) For the purposes of applying the provisions of that Part to an election, a reference in those provisions to the returning officer is construed as a reference to the returning officer within the meaning of this Part.

**Notification of result of election**

71. As soon as practicable after a candidate in an election has been elected, the returning officer is to notify the Minister and the Secretary of the Board in writing of the name of the candidate elected.

**Division 8—Miscellaneous****Decisions of returning officer final**

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

**Forms**

73. A form must be completed in accordance with any directions contained in it.

**Offences**

74. A person must not:

- (a) vote or attempt to vote more than once in any election; or

**1991—No. 230**

- (b) vote or attempt to vote in an 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 an election; or
  - (ii) in any document that the person furnishes for the purposes of an election.
- (c) by omitting Forms 16, 17 and 19 from the First Schedule and by inserting instead the following Forms:

**Form 16**

DRIED FRUITS ACT 1939

**NOMINATION OF CANDIDATE**

(Reg. 50)

We hereby nominate .....

*(name in full)*

of .....

*(postal address)*

as a candidate for the following election: .....

.....  
.....

*(specify the election to which the nomination relates)*

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

<i>Name in full</i>	<i>Address</i>	<i>Signature</i>
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.....	.....	.....
.....	.....	.....
.....	.....	.....

NOTE: This nomination must be completed by not less than 2 persons (other than the candidate), each of whom is qualified to vote in the election.

I, .....  
 hereby consent to being a candidate for the election to which this  
 nomination relates.  
 Postal address: .....  
 Postcode: ..... Telephone No.: .....  
 Date of birth: .....  
 Dated: ..... Signed: .....

**Form 16A**

DRIED FRUITS ACT 1939

**STATUTORY DECLARATION**

(Reg. 54)

I, ..... of .....  
 do solemnly and sincerely declare that:

1. My full name is .....
2. My residential address is .....  
 ..... Postcode: .....
3. My date of birth is .....
4. I am self-employed\*/employed by.....\*  
 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): .....  
 .....  
 .....



1991—No. 230

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 ..... 19.....,

.....  
(signature)

before me:

.....  
Justice of Peace

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 16B

DRIED FRUITS ACT 1939

CERTIFICATE

(Reg. 55)

I certify that this roll of growers contains the names (consecutively numbered and listed in alphabetical order) and addresses of those growers who, in my opinion, are entitled to vote in the 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: .....

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**Form 16C**

**DRIED FRUITS ACT 1939**

**APPLICATION FOR ENROLMENT**

(Reg. 59)

Surname: .....

Given names: .....

Postal address: .....

Postcode: ..... Telephone No.: .....

Address of property where the dried fruit is produced: .....

.....

Shire or Municipality in which the property is situated: .....

.....

I hereby apply for enrolment on the roll of growers for Division  
, Part

- \*(a) as the sole producer of the dried fruit;
- \*(b) as the representative of a corporation or partnership producing dried fruit at the property; or
- \*(c) as the representative of the trustees or legal personal representatives of a person or estate of a person producing dried fruit at the property.

Particulars of corporation\*/partnership\*/trustee\*/legal personal representative\* in respect of whom or which the applicant is the representative:

Name: .....

Postal address: .....

..... Postcode: .....

I declare that I am\*/the person that I represent is\* entitled to enrolment in accordance with section 5 of the Dried Fruits Act 1939 and Part 12 of the Dried Fruits Regulations.

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 16D**

DRIED FRUITS ACT 1939

**OBJECTION TO ENROLMENT**

(Reg. 60)

I hereby object to the inclusion in the final roll for the following election: .....

.....

*(specify the election to which the objection relates)*

of the name of .....

*(name in full)*

of .....

*(address)*

This objection is based on the following grounds:

.....

.....

*(specify the grounds of the objection)*

**1991—No. 230**

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Name of objector: .....  
Postal address: .....  
Postcode: ..... Telephone No.: .....  
Dated: ..... Signed: .....

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**EXPLANATORY NOTE**

The object of this Regulation is to amend the Dried Fruits Regulations to replace the provisions relating to the nomination and election of the members of the Dried Fruits Board who are elected by growers of dried vine and tree fruits in certain districts of New South Wales. The new provisions will enable the elections to be conducted by the Electoral Commissioner.

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