

TASMANIA

**WATER MANAGEMENT (ELECTORAL AND
POLLING) REGULATIONS 2019**
STATUTORY RULES 2019, No. 1

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WATER MANAGEMENT (ELECTORAL AND POLLING) REGULATIONS 2019

I, the Governor in and over the State of Tasmania and its Dependencies in the Commonwealth of Australia, acting with the advice of the Executive Council, make the following regulations under the *Water Management Act 1999*.

Dated 22 January 2019.

C. WARNER
Governor

By Her Excellency's Command,

GUY BARNETT
Minister for Primary Industries and Water

PART 1 – PRELIMINARY

1. Short title

These regulations may be cited as the *Water Management (Electoral and Polling) Regulations 2019*.

2. Commencement

These regulations take effect on 11 February 2019.

PART 2 – ELECTIONS

Division 1 – Application and interpretation

3. Application of Part

This Part applies to elections to elect the elective members of the board of a trust.

4. Interpretation of Part

In these regulations –

Act means the *Water Management Act 1999*;

adult means a natural person who has attained the age of 18 years;

certificate of election means the certificate issued under regulation 29(b) or regulation 30(b) in respect of an election;

close of nominations means the date and time fixed under regulation 7(b);

close of the ballot means the date and time fixed under regulation 19(1)(b);

election – see regulation 3;

Electoral Commissioner means the Electoral Commissioner appointed under section 14 of the *Electoral Act 2004*;

irrigation right means an irrigation right in force under section 23(1)(a) of the *Irrigation Clauses Act 1973*;

person means, in its application to a natural person, an adult;

Returning Officer, in an election, means the person appointed under section 211A of the Act to conduct the election.

Division 2 – Administration

5. Role of Electoral Commissioner

The Electoral Commissioner may issue directions and approve procedures, consistent with the Act and this Part, for the conduct of elections.

6. Role of Returning Officer

The Returning Officer in an election is to conduct that election in accordance with –

- (a) the Act and this Part; and
- (b) the directions and procedures, if any, issued and approved by the Electoral Commissioner under regulation 5.

Division 3 – Nominations

7. Nomination period

The Returning Officer in an election is to fix –

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- (a) the date on which nominations for the election open; and
- (b) the date on which and time at which nominations for the election close.

8. Notification of elections

- (1) The Returning Officer in an election, no later than 14 clear days before the close of nominations for the election, is to cause notice of the election to be –
 - (a) published in the *Gazette*; and
 - (b) provided, by post or electronic means, to persons on the electoral role in the relevant water district or, if applicable, in the part of the State covered by the relevant water management plan.
- (2) A notice under subregulation (1) is to –
 - (a) indicate the purpose of the election; and
 - (b) specify the vacancy or vacancies to be filled and call for nominations; and
 - (c) indicate how persons may obtain nomination forms or further information; and
 - (d) specify who is eligible to vote in the election and the conditions, if any, attaching to the procurement and exercise of that voting right; and

- (e) specify, if required, the ballot period; and
 - (f) contain any other information that the Returning Officer thinks fit.
- (3) The Returning Officer may cause any other notice of the election to be given that the Returning Officer thinks fit.

9. Nomination forms

- (1) The Returning Officer in an election is to –
- (a) prepare a sufficient number of nomination forms to enable the election to take place; and
 - (b) ensure that those nomination forms are available for use on the day on which the notice under regulation 8(1) is published.
- (2) A nomination form is to be prepared and printed in a form approved by the Electoral Commissioner.

10. Eligibility and nomination of candidates

- (1) An adult who is eligible to vote in an election is also eligible to be nominated as a candidate, and to be elected, in that election.
- (2) A person who wishes to nominate as a candidate in an election is to lodge a nomination form with the Returning Officer that –

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- (a) contains a declaration by the person that he or she is eligible to be a candidate in the election; and
 - (b) is signed by the person; and
 - (c) is lodged with and received by the Returning Officer by the close of nominations.
- (3) The nomination form may be lodged –
- (a) in person; or
 - (b) by post; or
 - (c) by fax; or
 - (d) by email (as a scanned image).

11. Acceptance or rejection of nominations

- (1) The Returning Officer in an election must accept a nomination form for the election if he or she is satisfied that –
 - (a) the nomination form complies with, and is lodged and received in accordance with, regulation 10; and
 - (b) the person nominated is eligible to be a candidate in the election.
- (2) The Returning Officer must reject a nomination for the election if he or she is not satisfied in accordance with subregulation (1).

12. Candidate statements

- (1) A candidate in an election may supply the Returning Officer with a written statement to be distributed with ballot papers.
- (2) The written statement must be received by the Returning Officer before the close of nominations for the election.
- (3) The statement is not to –
 - (a) exceed 150 words; or
 - (b) mention any other candidate unless the signed consent of that other candidate has been received by the Returning Officer together with the statement.
- (4) The Returning Officer, interfering as little as possible with the content of the written statements received, may –
 - (a) edit any or all of those written statements to make them consistent in style and layout and to correct any errors in spelling; and
 - (b) shorten to the required length any written statement that does not comply with subregulation (3)(a); and
 - (c) remove any mention of any other candidate if the signed consent of that other candidate has not been received.

13. Withdrawal of nomination

A candidate in an election may withdraw his or her nomination at any time before the close of nominations by giving the Returning Officer signed notice of the withdrawal.

Division 4 – Conduct of ballots

14. When are ballots required?

If, on the close of nominations for an election, the number of nominations accepted by the Returning Officer is more than the number of positions to be filled at that election, the Returning Officer must conduct a ballot.

15. Persons eligible to participate in ballots

(1) In an election for a trust established to administer a water district for which irrigation rights have been issued –

- (a) each person holding an irrigation right is eligible to vote in the election; and
- (b) if a person holds more than one irrigation right, the person may exercise a separate vote in respect of each of those irrigation rights –

but –

- (c) in the case of a corporation, its voting rights must be exercised entirely through

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- one adult nominated by the corporation;
and
- (d) in the case of irrigation rights held by persons in common (on whatever basis), those persons are only entitled to a single vote in respect of each of those irrigation rights and their voting rights must be exercised entirely through one adult whom they have jointly nominated.
- (2) In an election for a trust established to administer a water district for which irrigation rights have not been or are not to be issued, each person owning land in the water district is eligible to vote in the election but –
- (a) in the case of a corporation, its voting right must be exercised entirely through one adult nominated by the corporation;
and
- (b) in the case of land owned by persons in common (on whatever basis), the voting right in respect of that land must be exercised through one adult whom those persons have jointly nominated.
- (3) In an election for a trust established to administer a water management plan, a person is eligible to vote in the election if the person –
- (a) holds a licence to take water from a water resource to which the plan relates;
or

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- (b) has, as an occupier of a tenement to which section 48 of the Act applies, a right to take water from a water resource to which the plan relates –

but –
 - (c) in the case of a corporation, its voting right must be exercised through one adult nominated by the corporation; and
 - (d) in the case of a licence or tenement held or occupied by persons in common (on whatever basis), the voting right in respect of the licence or tenement must be exercised through one adult whom those persons have jointly nominated.
- (4) A natural person may exercise his or her voting right under subregulation (1), (2) or (3) through one adult nominated by that natural person but, if such a nomination is made in an election in which the natural person has and is exercising more than one voting right, all of those voting rights must be exercised through the same nominee.
- (5) An adult nominated under subregulation (4) must be someone who, in the relevant election –
 - (a) is not eligible to exercise a vote in his or her own right; and
 - (b) is not exercising a voting right on behalf of a corporation.

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- (6) To avoid doubt, for the purposes of this regulation –
- (a) the adult nominee of a corporation may be an officer or member of the corporation; and
 - (b) the adult nominee of a group of natural persons may be a member of the group.

16. Limit on number of votes

- (1) Except as provided by regulation 15(1), each person who is eligible to vote in an election is only entitled to cast one vote in that election, regardless of how many parcels of land they may own or occupy or how many licences or rights to take water they may hold.
- (2) However, subregulation (1) is not to be taken as preventing an adult who is eligible to vote in an election in his or her own right from –
 - (a) also being nominated to exercise a voting right for and on behalf of a corporation in the same election; or
 - (b) if so nominated, exercising that corporate voting right in addition to his or her personal voting right.

17. Electoral rolls

- (1) The Returning Officer in an election is to –

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- (a) fix a date and time for the close of the electoral roll; and
 - (b) prepare, in accordance with this regulation, an electoral roll of the persons to whom ballot material is to be posted or delivered; and
 - (c) make that electoral roll available for inspection by any person for the purposes of the election.
- (2) In the case of an election for a trust established to administer a water district for which irrigation rights have been issued –
 - (a) the chairperson of the trust must, on request, provide the Returning Officer with –
 - (i) a certified list of the persons who are eligible to vote in the election as at the close of the roll; and
 - (ii) any other information that the Returning Officer reasonably requires; and
 - (b) the certified list so provided becomes the electoral roll.
- (3) In the case of an election for a trust established to administer a water district for which irrigation rights have not been or are not to be issued –
 - (a) the general manager of the municipal area in which the water district is located

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- must, on request, provide the Returning Officer with –
- (i) a certified list of the persons owning land in the water district as at the close of the roll; and
 - (ii) any other information that the Returning Officer reasonably requires; and
- (b) the certified list so provided becomes the electoral roll.
- (4) In the case of an election for a trust established to administer a water management plan –
- (a) the Minister must, on request, provide the Returning Officer with –
 - (i) a certified list of the persons who are eligible to vote in the election, according to the register kept under section 12 of the Act, as at the close of the roll; and
 - (ii) any other information that the Returning Officer reasonably requires; and
 - (b) the certified list so provided becomes the electoral roll.
- (5) A person must not make or use a copy of an electoral roll or any part of an electoral roll except for the purposes of an election.

Penalty: Fine not exceeding 10 penalty units.

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(6) In this regulation –

certified list means a list certified by its provider as being true and correct;

close of the roll means the date and time fixed under subregulation (1)(a).

18. Ballot papers

- (1) Subject to this regulation, ballot papers for an election are to be prepared and printed in a form approved by the Electoral Commissioner.
- (2) The order in which the candidates' names are to be printed on the ballot papers is to be determined by lot.
- (3) A ballot paper is to –
 - (a) have a blank box next to the name of each candidate; and
 - (b) contain directions to the effect that the elector will be taken to have cast a vote for a candidate if he or she places an "X" in the box next to that candidate's name, and that the elector may, by that means, vote for as many candidates as the number to be elected (but not more).

19. Polling period

- (1) The Returning Officer in an election is to fix –

- (a) the date on which ballot papers are posted to eligible electors; and
 - (b) the date and time of the close of the ballot.
- (2) The ballot papers are to be posted to eligible electors at least 14 clear days before the close of the ballot.

20. Ballot material to be posted to electors

- (1) When conducting an election, the Returning Officer is to post or deliver the following material to each elector at the address of the elector shown on the electoral roll for the election:
- (a) the ballot paper;
 - (b) instructions for the completion of the ballot paper and the manner in which the ballot paper is to be returned;
 - (c) the envelope or envelopes to be used for the return of the ballot paper;
 - (d) candidate statements;
 - (e) such other material as the Returning Officer thinks fit.
- (2) An envelope to be used for the issue and return of a ballot paper is to –
- (a) make provision for the voter to sign a declaration authenticating the vote; and

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- (b) be designed to protect the secrecy of the vote.
- (3) Except as provided by subregulation (2), the form of the envelope is to be determined by the Electoral Commissioner.
- (4) The declaration required under subregulation (2) is to be to the effect that the voter –
 - (a) is the person named on the envelope; and
 - (b) voted on the ballot paper that is in the envelope.

21. Voting

An elector in an election, in accordance with the instructions issued by the Returning Officer, is to –

- (a) mark the ballot paper; and
- (b) place it in the envelope or envelopes provided; and
- (c) sign the voting declaration; and
- (d) send it by post or deliver it so that it is received by the Returning Officer before the close of the ballot.

22. Supplementary issue of ballot material

- (1) The Returning Officer in an election may, if there is reasonable time to do so before the close of the ballot, send, deliver or provide in person

supplementary ballot material to an elector who claims –

- (a) not to have received the original ballot material; or
 - (b) to have spoilt or lost the original ballot material sent to the elector; or
 - (c) to be entitled to vote despite not being on the list of electors; or
 - (d) that he or she will be absent from the address shown on the electoral roll for the election.
- (2) Supplementary ballot material requested in accordance with subregulation (1) may be sent or delivered to an address nominated by the elector.

23. Ballot papers not to be accepted

The Returning Officer in an election must not accept any ballot paper that is –

- (a) received by the Returning Officer after the close of the ballot; or
- (b) contained in an envelope where the voting declaration has not been signed as required under regulation 21; or
- (c) received from a person who is not (or in the reasonable opinion of the Returning Officer does not appear to be) eligible to vote in the election; or

- (d) received from a person who, except as permitted by regulations 15 and 16, has already voted in the election.

24. Informal ballot papers

- (1) A ballot paper in an election is informal if –
 - (a) there is no vote recorded on it; or
 - (b) it contains a mark or writing that, in the reasonable opinion of the Returning Officer, identifies the elector; or
 - (c) the elector has voted for more candidates than the number to be elected.
- (2) Except as provided by subregulation (1), a ballot paper is not to be treated as informal at the counting of votes if, in the reasonable opinion of the Returning Officer, the elector’s intention is clearly indicated on the ballot paper.

Division 5 – Determination of election result

25. Counting of votes

- (1) Except as provided by subregulation (2) –
 - (a) votes cast at an election are to be counted by tallying the number of votes received by each candidate; and
 - (b) the candidates receiving the highest number of votes are elected; and

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- (c) in the event of a tie, the winning candidate is to be determined by lot.
- (2) In the case of elections for the Elizabeth Macquarie Irrigation Trust, the Returning Officer is to count the votes so that –
 - (a) for an election held in an even-numbered year –
 - (i) the candidate receiving the highest number of votes from the Tooms Lake/Macquarie Irrigation District is elected; and
 - (ii) the 2 candidates receiving the highest number of votes from the Lake Leake/Elizabeth/Macquarie Irrigation District are elected; and
 - (b) for an election held in a non-even-numbered year –
 - (i) the 2 candidates receiving the highest number of votes from the Tooms Lake/Macquarie Irrigation District are elected; and
 - (ii) the candidate receiving the highest number of votes from the Lake Leake/Elizabeth/Macquarie Irrigation District is elected.

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26. Scrutineers

- (1) A candidate in an election may appoint a person who is not a candidate to be a scrutineer on his or her behalf.
- (2) The appointment of a scrutineer is to be –
 - (a) in writing and signed by the candidate; and
 - (b) lodged with the Returning Officer.
- (3) A scrutineer is entitled to be present at any stage of the ballot.
- (4) A candidate is not entitled to be present at any stage of the ballot.

Division 6 – Casual vacancies

27. Casual vacancies

A casual vacancy occurs –

- (a) when an elected board member of a trust ceases to hold office, other than by the normal expiry of the member's term of office as provided by regulation 32(1); or
- (b) if not all the positions required to be filled at a normal election are filled at that election.

28. Appointment of members to fill casual and other vacancies

- (1) The Minister may appoint a person to the board of a trust if a casual vacancy occurs.
- (2) An appointment under this regulation expires as provided in regulation 32(2).

Division 7 – Declaration of result

29. Declaration of result if no ballot required

If, on the close of nominations for an election, the number of nominations of candidates accepted by the Returning Officer is no more than the number of positions to be filled at that election, the Returning Officer is to –

- (a) declare that candidate or those candidates elected; and
- (b) issue a certificate of election as soon as practicable after the close of the ballot; and
- (c) forward that certificate of election to the Minister.

30. Declaration of result if ballot required

If a ballot is required, the Returning Officer, as soon as practicable after the close of the ballot, is to –

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- (a) declare the successful candidate or candidates elected; and
- (b) issue a certificate of election; and
- (c) forward that certificate of election to the Minister.

31. Publication of election result

As soon as practicable after issuing a certificate of election under regulation 29 or 30, the Returning Officer –

- (a) is to notify the persons elected of their election; and
- (b) is to cause a copy of the certificate of election to be published in the *Gazette*.

32. Publication of certificate of election result determines term of office

- (1) The term of office of a person who is elected as a board member of a trust expires on the day on which the certificate of election for the next election for the trust is published in the *Gazette* under regulation 31(b).
- (2) The term of office of a person who is appointed as a board member of a trust under regulation 28 expires on the day on which the certificate of election for the next election for the trust is published in the *Gazette* under regulation 31(b).

Division 8 – Miscellaneous

33. Disputed returns

An elector or candidate who disputes an election result as specified in the relevant certificate of election may, within the 90-day period immediately following the day on which that certificate is published in the *Gazette* in accordance with regulation 31(b), apply to the Magistrates Court for a review of the decision made in relation to that election result.

34. Formal defects not to invalidate elections

An election is not invalid by reason only –

- (a) of any formal error or defect in any certificate of election, notice, notification, list, declaration, statement or envelope; or
- (b) that any publication was out of time; or
- (c) of any delay in holding the election; or
- (d) of any failure to provide any election material; or
- (e) of any other defect, impediment or omission of a merely formal nature.

35. Retention and destruction of ballot papers

- (1) The Returning Officer is to keep the ballot papers from an election until the later of the following occurrences:
 - (a) the 90-day period referred to in regulation 33 expires;
 - (b) any proceedings arising from applications made under regulation 33 in respect of the election are finalised.
- (2) After complying with subregulation (1), the Returning Officer is to cause the ballot papers to be destroyed.

36. Costs of elections

- (1) The costs incurred by the Electoral Commissioner for or in connection with an initial election of trustees are to be –
 - (a) paid in the first instance by the Minister; and
 - (b) repaid to the Minister, by the trust, within 6 months after the Minister is notified of the election result under regulation 29(c) or regulation 30(c).
- (2) The costs incurred by the Electoral Commissioner for or in connection with any other election of trustees are to be paid by the trust.

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- (3) If a trust fails to pay or repay any costs for which it is liable under this regulation, the Minister may recover those costs in a court of competent jurisdiction as a debt due to the Crown.

PART 3 – POLLS

Division 1 – Application and interpretation

37. Application of Part

This Part applies to polls under and for the purposes of section 213 of the Act.

38. Interpretation of Part

In this Part –

Act means the *Water Management Act 1999*;

adult means a natural person who has attained the age of 18 years;

poll – see regulation 37.

Division 2 – Administration

39. Returning Officer

- (1) A poll is to be conducted by a Returning Officer appointed by the trust that is taking the poll.
- (2) The Returning Officer must be an adult who –
 - (a) is not eligible to vote in the poll in his or her own right; and
 - (b) has sufficient experience or qualifications to discharge the responsibilities of a Returning Officer for a poll under this Part.

- (3) The Returning Officer is not eligible to exercise any voting right in the poll for or on behalf of a corporation.

Division 3 – Conduct of polls

40. General procedures

- (1) The Returning Officer for a poll is to make all the arrangements and provisions that are necessary to conduct the poll.
- (2) Where any procedure, action or other matter that is necessary or incidental to the taking of the poll is not expressly provided for in this Part, that procedure, action or matter may be determined by the Returning Officer.
- (3) However, the Returning Officer must, as far as possible and subject to any necessary modifications, ensure that a determination made under subregulation (2) in respect of any procedure, action or matter is the determination that is most consistent with the applicable provisions set out in Part 2.

41. Ballot papers for polls

- (1) The Returning Officer is to ensure that a ballot paper for the purposes of a poll is prepared in accordance with this Part.
- (2) The ballot paper is to –

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- (a) list the amount of each proposed borrowing and the purposes for which those funds are to be applied; and
- (b) provide a designated space immediately beneath each proposal for the voter to write “yes” or “no”; and
- (c) provide instructions as to the manner of voting in accordance with regulation 42; and
- (d) be prepared and printed in a form approved by the Electoral Commissioner.

42. Voting in polls

- (1) Voting in a poll is to be by ballot.
- (2) A voter is to vote at the poll in the following manner:
 - (a) if the voter approves of a proposal, by writing “yes” in the box provided;
 - (b) if the voter does not approve of a proposal, by writing “no” in the box provided.
- (3) A vote will not count unless the voter writes either “yes” or “no” in respect of the proposal printed on the ballot paper.

43. Counting of votes in polls

As soon as practicable after the close of voting in a poll, the Returning Officer is to count the votes by examining the ballot papers to determine the following in respect of each proposal submitted to the voters in the poll:

- (a) the number of ballot papers marked “yes” by voters approving each proposal;
- (b) the number of ballot papers marked “no” by voters rejecting each proposal.

44. Declaration of poll results

- (1) As soon as practicable after all the votes in a poll are counted, the Returning Officer is to –
 - (a) declare the result of the poll; and
 - (b) issue a certificate (called a “polling certificate”) of the result; and
 - (c) forward that polling certificate to the relevant trust and a certified copy of that certificate to the Minister; and
 - (d) cause a copy of the polling certificate to be published in the *Gazette*.
- (2) The Returning Officer may also cause a copy of the polling certificate to be published in any newspapers or in any relevant publications.

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Printed and numbered in accordance with the *Rules Publication Act 1953*.

Notified in the *Gazette* on 30 January 2019.

These regulations are administered in the Department of Primary Industries, Parks, Water and Environment.

EXPLANATORY NOTE

(This note is not part of the regulations)

These regulations –

- (a) provide for the conduct of trust membership elections and polls in relation to the borrowing of money under the *Water Management Act 1999*; and
- (b) are made consequentially on the repeal of the *Water Management (Electoral and Polling) Regulations 2009* under section 11 of the *Subordinate Legislation Act 1992*.