



New South Wales

Local Government (General) Amendment (Election Procedures) Regulation 2012

under the

Local Government Act 1993

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Local Government Act 1993*.

DON PAGE, MP
Minister for Local Government

Explanatory note

The object of this Regulation is to make amendments to the *Local Government (General) Regulation 2005 (the Principal Regulation)* relating to the conduct of local council elections for councillors and mayors. The Regulation deals with the following matters:

- (a) making various provisions of the Principal Regulation consistent with corresponding provisions that regulate State elections under the *Parliamentary Electorates and Elections Act 1912*,
- (b) requiring paid electoral advertisements published on the internet during the regulated period for an election to show the name and address of the person who authorised the advertisement (in a similar manner to the requirement relating to other electoral material in clause 356G of the Principal Regulation and the requirement relating to internet advertising in section 328A of the *Commonwealth Electoral Act 1918*),
- (c) making other miscellaneous amendments of a minor or machinery nature.

This Regulation is made under the *Local Government Act 1993*, including section 748 (the general regulation-making power) of, and item 14 (Elections) of Schedule 6 to, that Act.

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Clause 1

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**Local Government (General) Amendment (Election
Procedures) Regulation 2012**

under the

Local Government Act 1993

1 Name of Regulation

This Regulation is the *Local Government (General) Amendment
(Election Procedures) Regulation 2012*.

2 Commencement

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

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[1] Clause 279 Form of roll of electors

Insert at the end of the clause:

- (2) A copy of the roll of electors may be compiled in an electronic form.

[2] Clause 284B Use of enrolment information—application of section 42 of Parliamentary Electorates and Elections Act 1912

Omit “section 31E” wherever occurring. Insert instead “section 42”.

[3] Clause 284C Prohibition of disclosure or commercial use of enrolment information—application of section 43 of Parliamentary Electorates and Elections Act 1912

Omit “section 31F” wherever occurring. Insert instead “section 43”.

[4] Clause 289 Nomination proposals

Insert after clause 289 (4):

- (4A) A given name of a candidate specified in a nomination paper as the form in which that name should be printed on the ballot-papers for the election may differ from the candidate’s given name as it appears on the roll only to the extent that the given name is specified by:
- (a) an initial standing for that name, or
 - (b) a commonly accepted variation of the name (including an abbreviation or truncation of that name or an alternative form of that name), or
 - (c) a commonly used other name specific to the candidate by which the candidate is usually identified (if the returning officer is satisfied that the proposed name is a commonly used other name specific to the candidate by which the candidate is usually identified).

[5] Clause 290 Candidate information sheets

Omit clause 290 (1). Insert instead:

- (1) The matters prescribed for the purposes of section 308 (2) of the Act that are to be included in a candidate information sheet are:
- (a) the proposed candidate’s full name, and

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- (b) the suburb, town or other locality of the proposed candidate's place of living (as shown on a roll kept under the *Parliamentary Electorates and Elections Act 1912*), and
- (c) whether the proposed candidate is a member of any registered political party and, if so, the name of the party, and
- (d) whether the proposed candidate is qualified to hold the civic office concerned by virtue of being enrolled on:
 - (i) the residential roll for the ward or area concerned, or
 - (ii) the non-residential roll for the ward or area concerned, or
 - (iii) the roll of occupiers and ratepaying lessees for the ward or area concerned.

[6] Clause 294 Inspection of names of persons proposed for nomination

Omit clause 294 (2). Insert instead:

- (2) A copy of the list in its current form must be displayed on the election manager's internet website between the time when the first name is placed on the list and noon on the nomination day.

[7] Clause 297 Polling places

Insert after clause 297 (2):

- (3) The election manager may appoint a place as a polling place for an area or ward whether or not the place is within or outside the area or ward concerned.

[8] Clause 298 Pre-poll voting offices

Insert after clause 298 (2):

- (3) The election manager may appoint a place as a pre-poll voting office whether or not the place is within or outside the area or ward concerned.

[9] Clause 300

Omit the clause. Insert instead:

300 Notice of contested election

- (1) If there is to be a contested election in respect of any ward or area, the election manager must on the nomination day or as soon as practicable afterwards cause a notice of that fact to be:
 - (a) published in a newspaper circulating in the area, and

-
- (b) displayed at the council's office and on the election manager's internet website.
- (2) The notice to be published in a newspaper circulating in the area must state the following:
- (a) that a poll will be taken in respect of the ward or area,
 - (b) the date of the poll,
 - (c) that information relating to the following is available at the council's office and on the election manager's internet website:
 - (i) the names of candidates and persons who have been nominated as candidates for the election and the registered political parties of which they are members,
 - (ii) the location of the pre-poll voting office or offices and the hours and days that those pre-poll voting office or offices will be open for pre-poll voting,
 - (iii) the location of the polling places where the poll will be taken on election day.
- (3) The notices to be displayed at the council's office and on the election manager's internet website must state the following:
- (a) that a poll will be taken in respect of the ward or area,
 - (b) the date of the poll,
 - (c) the full names of the persons who have become candidates and the names under which those persons have been nominated as candidates,
 - (d) the names of the political parties (if any) that must be printed adjacent to the names of the candidates on the ballot-papers,
 - (e) whether the word "Independent" must be printed adjacent to the name of any candidate on the ballot-papers,
 - (f) the location of the polling places where the poll will be taken on election day,
 - (g) the location of the pre-poll voting office or offices and the hours between which and the days on which electors may vote at the pre-poll voting office or offices.
- (4) The notices referred to in subclause (1) (b) must be displayed until at least election day.
- (5) A notice under this clause may include such other information relating to the election as the election manager thinks fit.

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[10] **Clause 309 Supply of rolls and ballot-papers**

Omit “certified under his or her hand to be true copies” from clause 309 (1) (a).
Insert instead “(whether in printed or electronic form)”.

[11] **Clause 309 (2A)**

Insert after clause 309 (2):

- (2A) The returning officer is to certify that each copy of the roll of electors provided for use at each polling place is a true copy of the roll of electors.

[12] **Clause 313 Postal voting: qualifications**

Insert at the end of clause 313 (j):

, or

- (k) is a person with a disability (within the meaning of the *Anti-Discrimination Act 1977*), or
(l) believes that attending a polling place on election day will place the personal safety of the person or of members of the person’s family at risk.

[13] **Clause 314 Postal voting: application**

Omit clause 314 (2) (a). Insert instead:

- (a) is to be in the form approved by:
(i) in relation to an election administered by a general manager of a council—the Director-General, or
(ii) in relation to an election administered by the Electoral Commissioner—the Electoral Commissioner, and

[14] **Clause 314 (3)–(6)**

Omit the subclauses. Insert instead:

- (3) **Application to be made to returning officer or Electoral Commissioner**

An application under this clause is to be made to the following persons:

- (a) in relation to an election administered by a general manager—the returning officer,
(b) in relation to an election administered by the Electoral Commissioner—the Electoral Commissioner.

(4) Method of application

An application under this clause may be made:

- (a) by physically delivering or sending it (by post or otherwise) to the relevant returning officer or Electoral Commissioner, as the case requires, or
- (b) by transmitting it by facsimile or email to the relevant returning officer or Electoral Commissioner, as the case requires, or
- (c) by completing the electronic form on the Electoral Commission's website in accordance with the directions of the Commission.

(5) Closing date for applications

An application under this clause must be received by the relevant person by 5 pm on the fifth day before election day.

(6) Electoral Commissioner to forward application to returning officers for council administered elections

If an application made to the Electoral Commissioner under this clause (including by use of the electronic form on the Electoral Commission's website) relates to an election administered by a general manager:

- (a) the Electoral Commissioner is to forward that application to the relevant returning officer for the election, and
- (b) the application is taken to have been received by that returning officer at the time it was received by the Electoral Commissioner.

(7) Physical delivery or sending of application

If a written application is to be physically delivered or sent (by post or otherwise) to a returning officer or the Electoral Commissioner, the application:

- (a) is to be placed by the applicant in an envelope addressed to the returning officer or the Electoral Commissioner and sealed, and
- (b) is to be delivered or sent directly to that person by the applicant (or if the applicant is physically incapable of delivering or sending the application and entrusts it to another person for that purpose, by that other person).

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(8) Emailed application

If the application is emailed to a returning officer or the Electoral Commissioner, the application is not validly transmitted by email unless:

- (a) an image of the completed application signed by the elector and witness is included in or attached to the email, and
- (b) that image includes an image of the actual signatures as appearing on the application.

(9) Inquiries as to authenticity of application

The returning officer or Electoral Commissioner may make such inquiries as he or she thinks fit to confirm the authenticity of an application if he or she considers it appropriate to do so in the circumstances.

[15] Clause 316 Electors entitled to postal vote

Omit clause 316 (3).

[16] Clause 317 Issue of postal ballot-paper

Insert “or Electoral Commissioner, as the case requires,” after “the returning officer” where firstly occurring in clause 317 (1).

[17] Clause 317 (1) (b)

Insert “(by hand or by electronic or mechanical means)” after “an election official”.

[18] Clause 318 Postal voting procedure

Omit “by the returning officer” from clause 318 (1) (a).

Insert instead “to the elector”.

[19] Clause 318 (6)

Insert “or pre-poll voting office” after “a polling place”.

[20] Clause 318 (6)

Insert “or the pre-poll voting officer at the pre-poll voting office, as the case requires” after “the polling place”.

[21] Clause 318 (7)

Omit “in Form 9”.

Insert instead “in the form approved by the Director-General (in relation to an election administered by the general manager of a council) or the Electoral Commissioner (in relation to an election administered by the Electoral Commissioner)”.

[22] Clause 321 Pre-poll voting: qualifications

Insert at the end of clause 321 (g):

, or

- (h) is a person with a disability (within the meaning of the *Anti-Discrimination Act 1977*), or
- (i) believes that attending a polling place on election day will place the personal safety of the person or of members of the person’s family at risk.

[23] Clause 323 Pre-poll voting procedure

Omit clause 323 (3).

[24] Clause 323 (5)

Omit the subclause. Insert instead:

(5) Ballot-paper to be handed to elector

If the elector answers the questions satisfactorily or no questions are to be put to the elector, the pre-poll voting officer must hand to the elector a ballot-paper in Form 4, 5 or 6 that is initialled on the front by the officer.

[25] Clause 323 (6)

Insert “the officer’s copy of” after “notation on”.

[26] Clause 323 (7) and (8)

Omit the subclauses. Insert instead:

(7) Delivery of ballot-paper to elector

On receiving a pre-poll ballot-paper, the elector is to:

- (a) go alone to an unoccupied space set aside for voting at the pre-poll voting office, and privately record his or her vote there on the ballot-paper, and

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- (b) fold the ballot-paper so as to conceal the vote marked on it, and then put it in the pre-poll ballot-box without unfolding it, and
- (c) leave the pre-poll voting office.

[27] **Clause 328 Taking of poll at declared institutions**

Omit “on any one or more of the fifth, fourth and third days before election day” from clause 328 (2).

Insert instead “on any day during the 7 days before election day appointed by the election manager”.

[28] **Clause 330 Procedure for voting at declared institutions**

Omit clause 330 (4).

[29] **Clause 330 (6)**

Omit the subclause. Insert instead:

(6) **Ballot-paper to be handed to elector**

If the elector answers the questions satisfactorily or no questions are to be put to the elector, the pre-poll voting officer must hand to the elector a ballot-paper in Form 4, 5 or 6 that is initialled on the front by the officer.

[30] **Clause 330 (7)**

Insert “the officer’s copy of” after “notation on”.

[31] **Clause 330 (8) and (9)**

Omit the subclauses. Insert instead:

(8) **Delivery of ballot-paper to elector**

On receiving the ballot-paper, the elector is to:

- (a) privately record his or her vote on the ballot-paper, and
- (b) fold the ballot-paper so as to conceal the vote marked on it, and then put it in the declared institutions ballot-box without unfolding it.

[32] **Clause 339 Questions put to elector**

Omit “in Form 12.” from clause 339 (6). Insert instead:

in the form approved by:

- (i) in relation to an election administered by a general manager of a council—the Director-General, or

-
- (ii) in relation to an election administered by the Electoral Commissioner—the Electoral Commissioner.

[33] Clause 341 Delivery of ballot-paper to elector

Insert “the official’s copy of” after “on” in clause 341 (2).

[34] Clause 344 Voting if name already marked on roll

Omit “the roll of electors has already been marked to show that the elector has received an ordinary, postal or pre-poll ballot-paper” from clause 344 (1).

Insert “it appears to an election official that a copy of the roll of electors at the polling place has been marked to show that the elector has received a ballot-paper”.

[35] Clause 344 (1)

Omit “in Form 13.”. Insert instead:

in the form approved by:

- (i) in relation to an election administered by a general manager of a council—the Director-General, or
- (ii) in relation to an election administered by the Electoral Commissioner—the Electoral Commissioner.

[36] Clause 348 Initial scrutiny of ballot-papers and counting of votes

Omit “in Form 14” from clause 348 (2).

Insert instead “in the form approved by the Director-General (in relation to an election administered by the general manager of a council) or the Electoral Commissioner (in relation to an election administered by the Electoral Commissioner)”.

[37] Clause 349 Sending ballot-papers to returning officer

Insert “printed” after “certified” in clause 349 (1) (c).

[38] Clause 349 (1) (d)

Insert at the end of clause 349 (1) (c):

, and

- (d) if a notation has been made on an electronic copy of the roll of electors, or on another file, on a computer to show the delivery of a ballot-paper to an elector—in a fourth parcel a copy of the electronic copy of the roll, or other file, so marked by that recording (such as on a memory stick or a disc as directed by the Electoral Commissioner).

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[39] Clause 350 Checking of ballot-papers in sealed envelopes

Omit “and signature indications” from clause 350 (1).

[40] Clause 350 (3) (b) and (5) (c)

Insert “the copy of” before “the roll of electors” wherever occurring.

[41] Clause 350 (3)

Omit clause 350 (3) (c)–(f). Insert instead:

- (c) turn the sealed ballot-paper envelope so that the declaration is face downwards, then open the envelope (without damaging the writing on it) and take out the ballot-paper and, without inspecting or unfolding it or allowing any other person to do so, place it in a securely fastened ballot-box for further scrutiny,
- (d) open the ballot-box, take out the ballot-papers, unfold and scrutinise them and reject the informal ones.

[42] Clause 350 (4)

Omit the subclause. Insert instead:

(4) **Section 305 votes**

The returning officer must:

- (a) on election day (at any time after 8 am) produce all the sealed envelopes containing section 305 votes cast before election day, and
- (b) on the close of poll produce all the sealed envelopes containing section 305 votes cast on election day, and deal with them in accordance with subclause (5).

[43] Clause 350 (5) (c)

Omit “in the case of section 305 votes—”.

[44] Clause 356E Display of posters

Insert after clause 356E (2):

- (3) Subclause (2) (a) does not apply in relation to a poster:
 - (a) on the outer wall, fence or other boundary of the grounds of an enclosure in which a building used for polling is situated, or
 - (b) within the grounds of an enclosure in which a building used for polling is situated, or

- (c) on a vehicle on a road or road related area (within the meaning of the *Road Transport (General) Act 2005*), or
- (d) fixed or attached to a table or stall on a footpath or other public place at any time on the day of polling for an election.

[45] Clause 356G Name and address on electoral material

Insert after clause 356G (2):

- (3) Subclause (1) does not apply in relation to:
 - (a) a T-shirt, lapel button, lapel badge, pen, pencil or balloon, or
 - (b) a business or visiting card that promotes the candidacy of any person in an election, or
 - (c) a letter or other card:
 - (i) that bears the name and address of the sender, and
 - (ii) that does not contain a representation or purported representation of a ballot paper for use in an election.

[46] Clauses 356GA and 356GB

Insert after clause 356G:

356GA Authorisation of advertisements on electronic billboards, digital road signs etc to be displayed

A person must not, during the regulated period, display any electoral matter on an electronic billboard, digital road sign or other similar device, unless the matter contains, in visible, legible characters, the name and address of the person on whose instructions the matter was displayed.

Maximum penalty: 5 penalty units.

356GB Publication of paid electoral advertisements on the internet

- (1) A person must not, during the regulated period, publish an advertisement containing electoral matter on the internet, or cause, permit or authorise such an advertisement to be published, if:
 - (a) the advertisement is paid for by the person or another person, and

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(b) the name and address of the person who authorised the advertisement do not appear at the end of the advertisement.

Maximum penalty: 5 penalty units.

(2) A person does not commit the offence in subclause (1) if the person establishes that the matter published on the internet forms part of a general commentary on a website.

(3) In this clause, the *address* of a person means an address, including a full street address and suburb or locality, that is located in Australia at which the person can usually be contacted during the day, but does not include a post office box.

[47] Clause 356J Display of posters on pre-poll voting days

Insert after clause 356J (1) (a):

(a1) within 6 metres of an entrance to a pre-poll voting office, or

[48] Clause 356Q Consideration of application for registration

Insert after clause 356Q (3) (c):

(c1) the material does not clearly identify the person, political party, organisation or group on whose behalf the material is to be distributed, or

[49] Clause 390 Check on double-voting and failure to vote

Omit “the rolls” wherever occurring from clause 390 (1) and (2).

Insert instead “the copies of the roll of electors”.

[50] Clause 391 Security of election materials

Omit clause 391 (1). Insert instead:

(1) The returning officer, after the election has been declared, is to parcel up the following items used in the election:

(a) the marked and unmarked ballot-papers,

(b) the printed copies of the roll,

(c) any other papers,

(d) if a notation has been made on an electronic copy of the roll, or on another file, on a computer to show the delivery of a ballot-paper to an elector—a copy of the electronic copy of the roll, or other file, so marked by that recording (such as on a memory stick or a disc as directed by the Electoral Commissioner).

[51] Clause 391 (4) and (5)

Omit clause 391 (4). Insert instead:

- (4) The election manager must ensure the parcels are kept securely until the latest of the following:
 - (a) the period of 6 months after the day of polling has expired,
 - (b) if proceedings in a court or tribunal relating to the election have been commenced within that period—the proceedings have been finally determined,
 - (c) if the election manager has consented to the use of the papers and materials in the parcels for research or analysis—the conclusion of that research or analysis.
- (5) On the expiry of the election manager's obligation under subclause (4), he or she may cause the parcels to be destroyed.

[52] Clause 392 Access to election materials

Omit the clause.

[53] Clause 392A

Omit the clause. Instead instead:

392A Section 305 votes—prescribed form of declaration

For the purposes of section 305 (c) of the Act, the prescribed form of declaration is Form 11 written or printed on an envelope.

[54] Clause 393A General manager to report on election

Insert “and displayed on the council’s internet website” after “the Minister” in clause 393A (3).

[55] Schedule 10 Constitutional referendums and council polls

Omit “the nomination day” from clause 4 (a1).

Insert instead “the roll closing date”.

[56] Schedule 11 Forms

Omit item 3 from Form 2. Insert instead:

- 3 request that my name should be printed on the ballot-papers for the election in the following form:
[surname in BLOCK letters, given name in BLOCK letters]

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[57] Schedule 11, Form 2, notes

Omit note 2. Insert instead:

- 2 An alternative form of a candidate's given name may only be:
 - (a) an initial standing for that name, or
 - (b) a commonly accepted variation of the name (including an abbreviation or truncation of that name or an alternative form of that name), or
 - (c) a commonly used other name specific to the candidate by which the candidate is usually identified (if the returning officer is satisfied that the proposed name is a commonly used other name specific to the candidate by which the candidate is usually identified).

[58] Schedule 11, Form 3

Omit item 3. Insert instead:

- 3 request that my name should be printed on the ballot-papers for the election in the following form:
[surname in BLOCK letters, given name in BLOCK letters]

[59] Schedule 11, Form 3, notes

Omit note 2. Insert instead:

- 2 An alternative form of a candidate's given name may only be:
 - (a) an initial standing for that name, or
 - (b) a commonly accepted variation of the name (including an abbreviation or truncation of that name or an alternative form of that name), or
 - (c) a commonly used other name specific to the candidate by which the candidate is usually identified (if the returning officer is satisfied that the proposed name is a commonly used other name specific to the candidate by which the candidate is usually identified).

[60] Schedule 11

Omit Forms 7, 9, 10, 12, 13 and 14.

[61] Schedule 11, Form 11, heading

Omit "(election day)".