

# PUBLIC SERVICE REGULATIONS 2014

## PABLIK SERWES REGYULIESHAN 2014

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NORFOLK



ISLAND

## **PUBLIC SERVICE REGULATIONS 2014**

## **PABLIK SERWES REGYULIESHAN 2014**

### **Regulations No. 8 of 2014**

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I, Gary Douglas Hardgrave, Administrator of Norfolk Island, acting in accordance with the advice of the Executive Council of Norfolk Island, make the following regulations under section 89 of the *Public Service Act 2014*.

Dated 19 December 2014.

The Hon. G.D. Hardgrave  
Administrator

By His Honour's Command  
L.D. Snell  
Chief Minister and Minister for Tourism

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### **Part 1 — Preliminary**

#### **1 Short title and Commencement**

- (1) These regulations may be cited as the *Public Service Regulations 2014*.
- (2) These Regulations are made upon the date upon which notification of their being made is published in the Gazette and come into effect upon the date the Administrator fixes as the date for commencement of the remainder of *the Act* in accordance with subsection 2(2).

#### **2 Interpretation**

In these regulations —

- (1) (a) “*the Act*” means the *Public Service Act 2014*;  
“*the Tribunal*” means the Public Sector Remuneration Tribunal;
- (b) reference to a section, or a part thereof are references to a section or part thereof in the Act.
- (2) Words and phrases used in these regulations shall have the same meaning as in the Act unless otherwise provided or the context requires otherwise.

### **Part 2 — Employment matters generally**

#### **3 Employment records**

- (1) For section 32, the employment record for an employee must include the information listed in Schedule 1.
- (2) However, the employment record is to include the information mentioned in

Schedule 1, Part 1, items 7, 8 and 9 only if the employee consents to that information being recorded.

#### **4 Resignation**

(1) For subsection 46(2), an employee must give 14 days' notice of his or her resignation, however, the Chief Executive Officer may accept a resignation for which a shorter period of notice is given.

(2) For subsection 46(4) a person may not be re-employed within 3 months of the date of the person's resignation.

#### **5 Employee surplus to requirements – redeployment or redundancy**

(1) For section 51, the following are prescribed as employee organisations —  
for any employee – an organisation of which the employee is a member nominated by the employee.

(2) For paragraph 53(2)(b) a redundancy payment shall be paid based on the period of employment in the public service as follows –

- (a) less than one year – nil;
- (b) for 1 year or more – 2 weeks' pay for every completed year of service up to a maximum of 48 weeks pay in total.

#### **6 Confidential information**

For paragraph 22(1)(d) a prescribed person is —

- (a) an officer of any department or agency of the Commonwealth or of a State or other Territory; and
- (b) an officer of a law enforcement agency of another country.

#### **7 Exclusion from the public service**

For subsection 5(2), for the class of persons described in column 1, the Act does not apply to the extent indicated in column 2 —

##### **Column 1**

##### **Column 2**

(a) a member of the Norfolk Island Police Force (whether member of the Australian Federal Police or locally engaged special constable other than a police community liaison officer employed by the Administration of Norfolk Island / Public Service of Norfolk Island)	Subject to the <i>Police Act 1931</i> (NI), the <i>Australian Federal Police Act 1979</i> (Cth), and the <i>Employment Act 1988</i> (NI) - the whole of the Act.
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<p>(b) Staff employed at or for the Norfolk Island Central School and any public school established in Norfolk Island (whether principal or assistant teachers or other staff)</p>	<p>Subject to the <i>Education Act 1931</i> (NI) and the <i>Employment Act 1988</i> (NI) - the whole of the Act except in regard to a requirement for such staff to each comply with the Public Service Code of Conduct in Schedule 5 of the Act as well as the public service principles but where any breach of such code of conduct or principles is to be dealt with by the Principal Teacher and/or the Administrator of Norfolk Island or the delegate of the Administrator.</p>
<p>(c) Staff employed at or for the Norfolk Island Tourist Bureau (other than subcontractors, consultants or independent contractors)</p>	<p>Subject to the <i>Norfolk Island Government Tourist Bureau Act 1980</i> – the whole of the Act except in regard to a requirement for such staff to each comply with the Public Service Code of Conduct as well as the public service principles but where any breach of such code of conduct or principles is to be dealt with by the General Manager of the Bureau.</p>
<p>(d) Staff employed at or for the Norfolk Island Hospital Enterprise (whether medical practitioners, nurses or other staff)</p>	<p>Subject to the <i>Norfolk Island Hospital Act 1985</i> (NI), the <i>Medical Practitioners Registration Act 1983</i> (NI), the <i>Pharmacy Act 1956</i> (NI) and the <i>Employment Act 1988</i> (NI) – the whole of the Act except in regard to a requirement for such staff to each comply with the Public Service Code of Conduct as well as the public service principles but where any breach of such code of conduct or principles is to be dealt with by the Director of the Norfolk Island Hospital Enterprise and/or by the Medical Superintendent and/or by the Director of Nursing as the case may be.</p>
<p>(e) Staff of the Administrator of Norfolk Island who are not employed by the Norfolk Island Public Service and any other persons whose terms and conditions of employment are determined by the Administrator of Norfolk Island or by the Commonwealth of Australia or by the Commonwealth public service</p>	<p>Subject to the <i>Norfolk Island Act 1979</i> (Cth) and the <i>Public Service Act 1999</i> (Cth) – the whole of the Act.</p>

(f) Staff of the Legislative Assembly of Norfolk Island (including any Norfolk Island Ministerial / Cabinet policy advisor staff not appointed to the Norfolk Island Public Service)	Subject to the <i>Legislative Assembly Act 1979</i> (NI) and the <i>Norfolk Island Act 1979</i> (Cth) – the whole of the Act except in regard to a requirement for such staff to each comply with the Public Service Code of Conduct as well as the public service principles but where any breach of such code of conduct or principles is to be dealt with by the Speaker of the Legislative Assembly of Norfolk Island and/or by the Chief Minister of Norfolk Island as the case may be.
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### Part 3 — Enterprise Bargaining

#### 8 Initiation of enterprise bargaining

For the purposes of section 79, the process and procedure for commencing negotiations for a proposed enterprise agreement shall be as follows —

(1) A period for negotiating a proposed enterprise agreement (the ***bargaining period***) may be initiated by —

- (a) the Chief Executive Officer; or
- (b) an eligible employee (who for the purposes of the Act and these regulations will be an employee whose employment will be subject to the agreement) acting on his or her own behalf and on behalf of other such employees.

(2) An eligible employee may initiate a bargaining period by notifying —

- (a) the other eligible employees whose employment will be subject to the agreement; and
- (b) if the initiating party is an eligible employee, the Chief Executive Officer.

(3) The notice is to be accompanied by written particulars of —

- (a) the matters that the proposed agreement will deal with; and
- (b) the proposed expiry date of the agreement; and
- (c) any other matters prescribed by regulations.

(4) The bargaining period begins at the end of 7 days after —

- (a) the day on which the notice was given; or
- (b) if the notice was given to different persons on different days - the latest of those days,

and ends when the earliest of the following events occurs —

- (c) the Public Sector Remuneration Tribunal approves an agreement arising out of that bargaining period; or
- (d) the Chief Executive Officer notifies the employee responsible for commencement of the bargaining period in accordance with paragraph (1)(b) that he or she wishes to end the bargaining period; or
- (e) if the initiating party is the Chief Executive Officer, a majority of the delegates representing employees under regulation 9 notify the Chief Executive Officer that they wish to end the bargaining period.

## **9 Employee Representation**

For the purposes of section 80, employee representatives shall be appointed as follows—

(1) **Eligible** employees may, in accordance with the procedure in Schedule 2 of these regulations, appoint not more than 3 delegates to represent them for the purposes of a particular bargaining period.

(2) The appointment of a delegate under subregulation (1) terminates if the delegate —

- (a) being a natural person, dies; or
- (b) being a body corporate becomes insolvent, enters into receivership or is de-registered; or
- (c) resigns by notice in writing to the Chief Executive Officer.

(3) If one or more appointments under subregulation (1) become vacant, the remaining delegates appointed under subregulation (1) must not represent employees until the vacant appointments are filled.

(4) Despite the appointment of delegates in accordance with subregulation (1), nothing prevents a person representing themselves in negotiations for the purposes of a particular bargaining period,

(5) The representation of the public service employer (ie the Chief Executive Officer) in any negotiations shall be as determined by the Chief Executive Officer from time to time and the Chief Executive Officer may vary or change such representation from time to time as he or she thinks fit.

## **10 Process for making an enterprise agreement**

For subsection 77(1)(b) and section 81, an enterprise agreement is made and approved as follows —

(1) The Chief Executive Officer must notify by prepaid post or by email to the last known address or personal or work email address on the employee's record every eligible employee at least 14 days before the date —

- (a) notified to the Chief Executive Officer by delegates appointed under regulation 9 as the date on which those representatives propose; or
- (b) if there are no such delegates, on which the Chief Executive Officer proposes,

to determine whether a valid majority of employees are in favour of the making of a proposed enterprise agreement and the determination must not be made until those 14 days have passed.

(2) The notice to every eligible employee must include a copy of the proposed agreement and an accurate explanation of its provisions.

(3) In order to determine if a majority of relevant employees are in favour of a proposed enterprise agreement, the Chief Executive Officer may request the Commissioner to hold a secret ballot of relevant employees in such manner as the Commissioner considers appropriate.

(4) If a proposed agreement is varied for any reason after the notice is given, the process specified in this section must again be taken in respect of the proposed agreement as varied.

(5) If a proposed agreement is approved by a ballot held in accordance with subregulation (3), the Tribunal may direct the process by which the agreement is to be implemented but if it does not do so the Chief Executive Officer may implement the agreement in such manner as he or she deems appropriate in the circumstances unless the Commissioner determined previously a process to be followed.

(6) Any process followed in order to determine the approval or otherwise of an agreement in accordance with this regulation must not expend any greater sum than that provided for the purpose by the budgetary process of the Administration.

#### **11 Termination of an enterprise agreement**

For subparagraph 77(2)(b) the prescribed manner is a secret ballot of relevant employees held at the request of the Chief Executive Officer by or at the direction of the Commissioner and in such manner as the Commissioner considers appropriate having regard to clauses 13 to 19, 22 to 24, and 27 (modified as appropriate) of Schedule 2 of these regulations.

### **Part 4 — Notices**

#### **12 Prescribed notice of intention to appoint**

For the purposes of subsection 37(5) of the Act unless the Chief Executive Officer otherwise determines, the prescribed manner of notifying —

- (a) selection of an applicant for appointment to employment in the public service; or
- (b) the declining of acceptance by a person selected for employment in the public service,

is by written notice, including by electronic notice, sent to each applicant, or each other applicant as the case requires, by ordinary post or e-mail at the postal or e-mail address provided by the applicant in his or her application.

#### **13 Prescribed procedure for filling vacancies**

(1) For section 38 the prescribed procedure is that the vacancy be filled by an open and advertised process based upon the merit principle as defined in the Act unless the vacancy is temporary; in which case the Chief Executive Officer may fill the position by appointment of a person having the skills, qualifications and ability necessary for the position.

(2) In subregulation (1), “temporary” means a situation where a position is vacant for reason that the incumbent is absent on leave for a period not exceeding 12 months or is performing other duties in another position on a temporary basis.

#### **14 Eligible appellant for selection decisions**

For section 70; a person who has applied for a position and has been notified of the selection of a preferred candidate and alleges an error of law or of procedure in the selection is an eligible appellant unless the person—

- (i) is not eligible for the appointment; or
- (ii) has withdrawn an application for appointment; or
- (iii) is not willing to take up the appointment.



**15 Disciplinary action**

For subsection 60(2) the Chief Executive Officer shall follow or apply the following practices and procedures —

- (a) a practice or procedure by which the Chief Executive Officer must apply in undertaking his or her investigation and in his or her decision making process the principles of procedural fairness, namely—
  - 1. The bias rule —  
To act fairly and without bias; and to not hold, or be perceived to hold, a direct personal interest in the outcome of the process.
  - 2. Hearing rule —  
That the employee be provided with notice of any allegations against him or her, and be given a reasonable opportunity to respond to those allegations or decisions affecting him or her, and that their response is genuinely considered.
  - 3. Evidence rule  
That decisions are based on logically probative, that is to say compelling, evidence; and that irrelevant considerations are not taken into account in making the decision; and
- (b) a practice or procedure by which the Chief Executive Officer, in undertaking any investigation and in his or her decision making process, must seek an outcome that observes procedural fairness, ensures that decisions are based on a proper assessment of the facts and circumstances prevailing at the time of the suspected breach of discipline, in order that decisions are impartial, transparent and capable of review; and
- (c) a practice or procedure by which the Chief Executive Officer, in undertaking any investigation and in his or her decision making process, may if he or she considers it appropriate so to do given the circumstances of a particular case (or if the Commissioner so determines from time to time), follow any other practices and procedures provided they are not in conflict with the practices or procedures set out in these regulations requiring the application of the principles of procedural fairness set out above.

**SCHEDULE 1****Employment record**

*(Regulation 3)*

**Part 1 Personal details**

- 1 Full name and any previous names.
- 2 Residential and postal addresses.
- 3 Date of birth.
- 4 Sex or gender neutral or transgender status.
- 5 Next of kin and emergency contact.
- 6 Citizenship or residency status.

- 7 Whether the employee has any dependents and, if so, the following details for each of them:
  - (a) full name;
  - (b) date of birth;
  - (c) relationship to the employee;
  - (d) residential address.
- 8 Any disabilities relevant to the employee's employment.
- 9 Ethnicity or Pitcairn Islander descent or Indigenous descent or identification with and acceptance by any such group as having such ethnicity or descent (optional).

**Note for items 7 to 9:**

*Under subregulation 3(2), the information mentioned in items 7 to 9 is to be recorded only with the employee's consent.*

## **Part 2 Employment details**

- 1 Employee number
- 2 Designation, and any previous designations
- 3 Entitlements and the use of those entitlements
- 4 Qualifications & training
- 5 Medical reports provided for under sections 39, 55, 61 of the Act
- 6 Any other information or documents or details as the Chief Executive Officer or the Public Service Commissioner may from time to time require by notice in writing to be included in any one or more employment records

## **SCHEDULE 2**

*(Regulation 9)*

### **Procedures for the election of delegates for Enterprise Bargaining**

#### **1 Application**

A reference to an election in these procedures includes an election to fill a casual vacancy, unless otherwise indicated.

#### **2 Voting system**

An election to elect the employee delegates for Enterprise Bargaining ("the EBA delegates") shall be conducted by secret ballot using the first-past-the-post system of voting in accordance with these procedures.

#### **3 Timing of elections or ballots**

(1) An election (except for an election to fill a casual vacancy) or ballot shall be called by the Returning Officer (appointed by the Chief Executive Officer for the purpose) not less than 30 days before the commencement of any period of Enterprise Bargaining or not less than 30 days before any ballot is to be held for purposes of approval by relevant employees of any proposed Enterprise Bargaining Agreement where required under the Act or these regulations.

(2) An election to fill a casual vacancy shall, subject to subregulation 9 of the *Public Service Regulations 2014*, be called by the Returning Officer as soon as practicable after the vacancy occurs.

(3) The Returning Officer may by notice in writing to the person having the possession, power and custody of any electoral roll for the Territory of Norfolk Island or any public service employee records for the Administration require the provision to the Returning Officer of the whole or any part of any such electoral roll or employee records any such person shall comply with such notice.

(4) The Returning Officer shall create and maintain a Roll of Eligible Employees for the purposes of any election or ballot to be conducted for purposes of the Act or these regulations and shall provide such Roll to the Chief Executive Officer after the ballot is finalized and the result is declared in accordance with the Act and these regulations.

**4 Election or ballot intervals**

When conducting an election or ballot the Returning Officer shall ensure that —

- (a) there are not less than 4 days nor more than 14 days between the date the notice of election is issued and the date and time for nominations to close; and
- (b) there are not more than 14 days between the time for nominations to close and the issue of ballot papers; and
- (c) there are not less than 4 days nor more than 14 days between the issue of ballot papers and polling day.

**5 Notification of holding of election or holding of ballot**

The Returning Officer shall call the election by issuing a notice of election to the relevant employees as people eligible to vote in the election by such means as the Returning Officer considers reasonably appropriate. Without limiting that discretion, the Returning Officer may issue the notice of election to relevant employees either directly or through managers, by email or facsimile transmission.

**6 Information to be given in notice of election or notice of ballot**

A notice of election or notice of ballot shall —

- (a) state that an election or ballot is necessary;
- (b) specify the number of delegate positions or vacancies to be filled or the ballot question to be determined (eg whether the proposed Enterprise Bargaining Agreement is agreed to by the relevant employees for purposes of approval by the Public Sector Remuneration Tribunal of Norfolk Island);
- (c) in the case of an election, invite nominations of relevant employees as candidates who are eligible for election;
- (d) in the case of an election, specify that a candidate shall be required to indicate on a nomination form whether or not the candidate is an office bearer of a prescribed employee organisation under the *Public Service Regulations 2014*, and if so, the name of the prescribed employee organisation;
- (e) in the case of an election, specify the form in which nominations must be made;
- (f) in the case of an election, specify a time and date for nominations to close;
- (g) in the case of a ballot, indicate where a copy of the proposed Enterprise Bargaining Agreement may be viewed or obtained by a relevant employee (including on-line) in addition to the Chief Executive Officer providing a copy of the proposed Enterprise Bargaining Agreement to the eligible employees in accordance with regulation 10(2) of these regulations;
- (h) in any case, specify a polling day or days for the election or ballot as the case may be;
- (i) in any case, specify the places at which polling booths will be established and the times and day or days at those places during which polling is to be conducted;
- (j) inform persons whose name is on the Roll of Eligible Employees (“eligible voters”) that they can apply for a postal vote if he or she can satisfy the Returning Officer that he or she will be unable to attend a polling booth to vote;
- (k) inform relevant employees where the Roll of Eligible Employees can be inspected to enable relevant employees to confirm that they are an eligible voter; and
- (l) contain such other information relating to the election or ballot (as the case may be) as the Returning Officer thinks fit.

**7 Nomination of candidates for election**

For any election of the EBA delegates, a separate nomination form shall be completed for each candidate and shall be lodged with the Returning Officer before the time and date specified for nominations to close.

**8 Completion of nomination form**

A nomination form must —

- (a) be signed by 2 relevant employees who are entitled to vote at the election; and
- (b) be endorsed with or accompanied by the consent in writing of the candidate.

**9 Rejection of nomination form**

The Returning Officer —

- (a) shall reject a nomination form that does not comply with clauses 7 and 8 or if the candidate is not eligible for election as one of the EBA delegates; and
- (b) in that event, shall give written notice to the candidate of the fact that his or her nomination has been rejected.

**10 Invitation to submit another nomination form**

If a candidate has his or her nomination form rejected, the Returning Officer shall invite the candidate to submit another nomination form if –

- (a) the candidate is eligible for election; and
- (b) the time and date fixed for nominations to close have not passed.

**11 Scrutiny of roll of voters**

(1) Any current employee of the Administration at the time of the proposed election or ballot shall be entitled to scrutinise the roll of Eligible Employees.

(2) A current employee of the Administration may request in writing that the Returning Officer review an eligible employee's eligibility to have his or her name on the roll of Eligible Employees.

(3) The Returning Officer shall review the request and if the Returning Officer is of the opinion –

- (a) that a person on the roll of Eligible Employees is not eligible to be on the roll – the Returning Officer shall remove that person's name from the roll and shall inform that person in writing of the decision; or
- (b) the Returning Officer shall place that person's name on the roll and shall inform that person in writing of the decision.

(4) If the Returning Officer removes a person from the roll of Eligible Employees and the person has already been issued with postal ballot papers under subclause 14(1), the Returning Officer shall ensure that a vote cast by the person is invalidated.

**12 Procedure after close of nominations**

(1) If the number of candidates nominated for an election is equal to, or less than, the number of vacancies to be filled, the Returning Officer shall declare the candidate or candidates to be elected as the EBA Delegates.

(2) If the number of candidates nominated for an election is more than the number of vacancies to be filled, the Returning Officer shall conduct a poll to fill the vacancy or vacancies.

(3) If the number of candidates nominated for election is less than the number of vacancies to be filled, the Returning Officer shall call as soon as practicable another election to fill the remaining vacancies.

**13 Conduct of ballot**

(1) If a poll is required for an election or a ballot, the Returning Officer shall conduct a ballot.

(2) The Returning Officer shall arrange –

- (a) for the poll to be held on the specified polling day or days; and
- (b) for polling booths to be established at the specified places at the times and on the polling day or days for the purpose of issuing ballot papers to eligible Relevant Employee voters.

**14 Application for postal vote**

(1) The Returning Officer shall send the following documents to each Eligible Employee who has applied for a postal vote in accordance with the notice of election –

- (a) a ballot paper;
- (b) a notice setting out how the ballot paper is to be completed and specifying the time and date by which the completed ballot paper must reach the Returning Officer;
- (c) a form of declaration of identity and of entitlement to vote; and
- (d) two envelopes, one marked "Ballot paper" and the other addressed to the Returning Officer.

(2) The Returning Officer may, on receipt of a declaration by a person who has applied for a postal vote stating that a voting paper has been lost, destroyed or spoiled, issue a duplicate voting paper to that person if satisfied as to the truth of the declaration.

**15 Requirement for ballot papers**

(1) Each ballot paper shall –

- (a) specify the names of the candidates or (in the case of a ballot) the question of whether the proposed Enterprise Bargaining Agreement is to be approved or not or whether it is to be terminated or not as the case may be; and
- (b) if a candidate for election as one of the EBA Delegates is an office bearer of a prescribed organisation under the *Public Service Regulations 2014* – specify that the candidate is an office bearer of the named prescribed organisation; and
- (c) provide instructions on how it is to be completed.

(2) The Returning Officer shall arrange for the order in which the names of candidates for election as the EBA Delegates are to be decided by lot and for those names to appear on ballot papers in that order or the manner in which any question for ballot is to appear on ballot papers.

- (3) The Returning Officer shall initial each ballot paper at the time it is issued.

**16 How ballot paper is to be completed**

- (1) It shall not be compulsory for an eligible Relevant Employee voter to cast a vote.
- (2) If an eligible Relevant Employee voter chooses to cast a vote, he or she shall do so by placing a legible figure or mark in the box opposite the name of the candidate or candidates, as the case may be, to whom the voter wishes to give his or her vote or in the case of a ballot shall do so by placing a legible figure or mark in the box next to the words “yes” or “no” to signify their approval or rejection as the case may be of the ballot question.
- (3) In the case of an election, the maximum number of candidates which an eligible Relevant Employee voter can vote for shall be equal to the number of vacancies to be filled.
- (4) An eligible Relevant Employee voter can vote for a number of candidates which is less than the number of vacancies to be filled.
- (5) In the case of a ballot, an eligible Relevant Employee can only vote for a yes or a no on the question but not for both provided that where more than one ballot question is contained on a ballot paper, then an eligible Relevant Employee can vote yes or no on one question and differently for another question if they so wish providing that in doing so, the ballot paper is not rendered unclear or uncertain as to the intent of the eligible Relevant Employee voter completing it or having it lawfully completed for them in accordance with the Act and the regulations.

**17 Conduct of ballot**

- (1) An eligible Relevant Employee voter who has not applied for postal ballot papers and who applies in person to the poll officer at a polling booth during polling time on a polling day is entitled to be issued with a ballot paper for the election.
- (2) However, the poll officer may refuse to issue a ballot paper to an eligible Relevant Employee voter if satisfied that the eligible Relevant Employee voter has already received a ballot paper for the election.
- (3) The poll officer shall take such steps as are practicable to ensure that only one ballot paper is issued to an eligible Relevant Employee voter applying to vote.
- (4) The poll officer may issue a replacement ballot paper to an eligible Relevant Employee voter on receipt of a spoiled ballot paper if satisfied that the ballot paper issued to the eligible Relevant Employee voter has been spoiled.
- (5) An eligible Relevant Employee voter who is issued with a ballot paper shall, after completing the ballot paper, deposit the ballot paper in the ballot box provided for the purpose at the polling place.
- (6) Such a ballot paper shall be deposited in the presence of a poll officer and as soon as the eligible Relevant Employee voter has recorded his or her vote.
- (7) A ballot paper received by a poll officer is, for the purposes of this election, taken to be sent or delivered to, or received by, the Returning Officer.

**18 Procedure for voting by post**

- (1) This clause applies to a case where an eligible Relevant Employee voter has applied for a postal vote.
- (2) Each such voter shall, after completing the ballot paper that was sent to the Relevant Employee voter –
- (a) enclose and seal that ballot paper in the envelope marked “Ballot paper”;
  - (b) enclose and seal that envelope marked “Ballot paper” in the envelope that is addressed to the Returning Officer, together with the completed declaration of identity and entitlement to vote; and
  - (c) send by post or deliver to the Returning Officer the envelope so addressed no later than the specified time on polling day.

**19 Envelopes and ballot papers not to be opened or examined**

The Returning Officer shall take all reasonable steps to ensure that –

- (a) all votes received under clause 17 shall remain secured and unexamined; and
- (b) all envelopes received under clause 18 shall remain secured and unopened, until the close of the poll.

**20 Election or Ballot not invalidated because of certain errors**

An election or a ballot is not invalid only because –

- (a) at the time when a notice of election or a notice of ballot is issued, the name of a person who is entitled to have his or her name entered on a roll of Eligible Employees is omitted from that roll;
- (b) a person whose name is on a roll of Eligible Employees did not receive a ballot paper or did not see a notice of election or a notice of ballot;

- (c) a ballot paper has not been issued to a person whose name is eligible to be entered on the relevant roll of Eligible Employee voters but the name has not been so entered;
- (d) any or all of the documents referred to in subclause 14(1) were not issued to a person eligible as a Relevant Employee to cast a postal vote;
- (e) a ballot paper was issued to a person before his or her name was removed from the roll of Eligible Employees by the Returning Officer in accordance with paragraph 11(3)(a); or
- (f) a ballot paper was issued to a person before his or her name was removed from the roll of Eligible Employees by the Returning Officer in accordance with paragraph 11(3)(a) and that person has cast a vote.

**21 Candidate may appoint scrutineer**

(1) Each candidate for election as one of the EBA Delegates is entitled to nominate one scrutineer to be present at any counting of votes.

(2) A person is qualified to be appointed as a scrutineer only if the person is an employee of the Administration.

(3) A candidate is not eligible to be appointed as a scrutineer at the election.

(4) The appointment of a scrutineer shall, unless the Returning Officer otherwise permits, be made by the candidate delivering to the Returning Officer a notice signed by the candidate specifying the name of the scrutineer.

(5) A scrutineer shall not –

- (a) interfere with or attempt to influence the counting of the votes;
- (b) handle the ballot papers.

(6) A scrutineer who contravenes or fails to comply with subregulation 21(5) may be removed from the premises by the Returning Officer or a person authorised by the Returning Officer.

**22 Non-disclosure of how person voted**

(1) This clause applies to the following persons concerned with the conduct of an election –

- (a) the Returning Officer;
- (b) any Deputy Returning Officer;
- (c) any poll officer;
- (d) any scrutineer appointed in connection with the election.

(2) A person to whom this clause applies must not disclose, or assist another person to disclose, any information as to how any particular Relevant Employee voter has voted at an election or ballot.

**23 Procedure after close of poll**

(1) Immediately after the close of the poll the Returning Officer shall take possession of the ballot boxes.

(2) As soon as practicable after the closing of polling at an election or at a ballot, the Returning Officer and if required, the Deputy Returning Officer and any poll officers shall, in the presence of such of the scrutineers as choose to be present –

- (a) examine the ballot papers cast at the election;
- (b) reject all informal ballot papers;
- (c) count the votes for each candidate or for /against the question or questions on the unrejected ballot papers; and
- (d) place in a separate parcel all the ballot papers that have been rejected as informal.

**24 Certain ballot papers to be rejected as informal**

(1) The Returning Officer shall reject as informal any ballot paper cast by a voter at an election that –

- (a) is not initialled as required by subclause 15(3); or
- (b) does not comply with a requirement of clause 16 or 18.

(2) Despite subclause 24(1), a ballot paper is not informal only because a figure or mark placed on the ballot paper is not placed in or entirely in the square opposite a candidate's name or opposite the yes or no answer to the question or questions. However, in that case the figure or mark must have been placed on the ballot paper in such a position and with such legibility as clearly indicates to the satisfaction of the Returning Officer the Relevant Employee voter's preferences for the candidates or such voter's decision as regards the question or questions to be answered in the ballot.

**25 Objections by scrutineer**

(1) If a scrutineer at the counting of votes objects that a ballot paper is informal, the Returning Officer, the Deputy Returning Officer or a poll officer shall mark the ballot paper "admitted" or "rejected" according to his or her decision to admit or reject the ballot paper.

(2) Subclause 25(1) does not prevent the Returning Officer, the Deputy Returning Officer or a poll officer from rejecting a ballot paper as informal although a scrutineer has not objected to it.

**26 Withdrawal, ineligibility or death of candidate**

If, before the declaration of the poll for election of the EBA Delegates, a candidate withdraws as a candidate, a candidate at the election dies or becomes no longer eligible for election, the election is to proceed as if –

- (a) The candidate had not been nominated for election;
- (b) that candidate's name had not been included on the ballot papers printed for the election; and
- (c) any vote for that candidate had not been cast.

**27 Determination of election or ballot result**

(1) If, after the Returning Officer has counted the total number of votes, 2 or more candidates in the case of an election of the EBA Delegates have an equal number of votes and one or more of such candidates have to be excluded, the Returning Officer shall determine by lot which of them shall be elected. The determination by lot shall be conducted as follows –

- (a) the name of each candidate concerned is to be written on separate and similar slips of paper;
- (b) the slips must then be folded so as to prevent identification;
- (c) those slips are then to be mixed and one slip is to be drawn at random; and
- (d) the candidate whose name is drawn is to be elected; and
- (e) the candidate so elected is taken to have received an additional vote.

(2) As soon as the Returning Officer is satisfied that the election or ballot result has been determined, the Returning Officer shall —

- (a) subject to the *Public Service Regulations 2014*, declare elected as the EBA Delegates those number of candidates equal to the number to be elected, who have the highest number of votes; or
- (b) subject to the *Public Service Regulations 2014*, declare the results of the ballot as regards the question or questions answered in the affirmative and as regards the question or questions answered in the negative and the consequences of such answer or answers for the outcome of the ballot; and
- (c) if the Chief Executive Officer is not the Returning Officer – report the declaration to the Chief Executive Officer.

(3) The Returning Officer shall, within 3 days of declaring the candidates elected as the EBA Delegates or declaring the results of the ballot as to the question or questions asked, issue a written declaration of poll to Relevant Employees by such means as the Returning Officer considers reasonably appropriate. Without limiting that discretion, the Returning Officer may issue the declaration to Relevant Employees either directly or through managers or section heads, by email or facsimile transmission.

**28 Discretionary powers of returning officer**

(1) The Returning Officer shall be authorised to exercise any and all discretionary powers necessary or convenient to facilitate the conduct of an election or a ballot in accordance with the *Public Service Act 2014* and the *Public Service Regulations 2014*.

(2) The Returning Officer shall, despite any other law, be entitled to and have full power to require by notice in writing the provision to the Returning Officer of the whole or any part of any general Territory electoral roll of voters or of the whole or any part of any list of employees of the Administration of Norfolk Island (whether past or present or both) in existence from time to time and the Returning Officer may use any such information or document or any part thereof for the purposes of the Act or these regulations in such manner and at such times as the Returning Officer may think fit including but not limited to providing any such information or document or any part thereof to the Public Service Commissioner or any delegate thereof for the purposes of the Act or these regulations and any person or office holder or agency having possession custody or power in regard to the collection and maintenance of any such information or document shall comply forthwith with any such notice in writing.

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