

EXPLANATORY STATEMENT

Australian Film, Television and Radio School Act 1973

Australian Film, Television and Radio School (Council Elections) Regulations 2017

Issued by the Authority of the Minister for the Arts

Authority

The Governor-General has made the *Australian Film, Television and Radio School (Council Elections) Regulations 2017* (**the new Regulations**) under paragraphs 8(1)(b) and 8(1)(c), and section 51 of the *Australian Film, Television and Radio School Act 1973* (**the Act**).

Paragraphs 8(1)(b) and 8(1)(c) of the Act provide that a staff member and a student are to be elected to the Australian Film, Television and Radio School Council (**the Council**) in the manner prescribed. Section 51 of the Act provides that the Governor-General may make regulations prescribing all matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Subsection 33(3) of the *Acts Interpretation Act 1901* relevantly provides that where an Act confers a power to make an instrument of a legislative character (including regulations), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions to repeal, rescind, revoke, amend, or vary any such instrument. The new Regulations repeal the *Australian Film, Television and Radio School (Elections) Regulations* (**the sunseting Regulations**).

Purpose and operation

The Act establishes the Australian Film, Television and Radio School (**AFTRS**). Subsection 7(1) of the Act provides that AFTRS will be governed by the Council.

The sunseting Regulations prescribe the process by which students and staff members are elected to the Council. The sunseting Regulations were due to sunset on 1 October 2017 under Part 4 of Chapter 3 of the *Legislation Act 2003*. Following a review of the sunseting Regulations, and consultation with AFTRS, it was determined that the Regulations continue to be required.

The new Regulations reflect the sunseting Regulations, however include amendments to update, modernise and reduce complexity. The new Regulations also allow elections to be conducted in whole or in part by electronic means, including by the use of computers, email and/or the internet. The new Regulations have been updated to reflect modern drafting techniques remove the provisions relating to election to the Council of members from Convocation, as they are no longer elected but are appointed by the Governor-General, as per paragraph 8(1)(e) of the Act.

The new Regulations are a legislative instrument for the purposes of section 8 of the *Legislation Act 2003*.

The notes on the provisions of the new Regulations are set out in Attachment A.

Consultation

AFTRS was consulted throughout the process of preparing the new Regulations.

Regulatory Impact

The Office of Best Practice Regulation (**OBPR**) has advised that, as the new Regulations make amendments with minimal impact, a Regulatory Impact Statement is not required. The OBPR reference number is 22144.

Statement of Compatibility with Human Rights

A statement of compatibility with human rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out in Attachment B.

Notes on the *Australian Film, Television and Radio School (Council Elections) Regulations 2017*

Part 1 – Preliminary

Division 1 - Preliminary

Section 1 Name

Section 1 provides that the name of the instrument is the *Australian Film, Television and Radio School (Council Elections) Regulations 2017* (the Regulations).

Section 2 Commencement

Section 2 provides that the Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

Section 3 Authority

Section 3 provides that the authority for making the Regulations is the *Australian Film, Television and Radio School Act 1973* (the Act). The applicable provisions that give authority are paragraphs 8(1)(b) and 8(1)(c), and section 51 of the Act.

Section 4 Schedule 3

Section 4 provides that each instrument that is specified in Schedule 3 is amended or repealed as set out in the respective item.

Section 5 Purpose of this instrument

Section 5 provides that the purpose of the Regulations is to prescribe a method by which staff members elect a staff member to the Council, and a method by which students of the School elect a student to the Council for the purposes of paragraphs 8(1)(b) and (c) of the Act respectively.

Section 6 Outline of this instrument

Section 6 provides a broad outline of what is included in the Regulations. The outline specifically identifies that the elections for staff and student members of the Council are to be conducted by a returning officer. The returning officer is the Secretary to the Council.

The Regulations provide that the returning officer will:

- Set the dates for the election;
- Call for nominations;
- Conduct a ballot (if necessary); and
- Publish the results of the election.

The outline states that elections may be conducted electronically.

Division 2 - Definitions

Section 7 Definitions

Explanatory Statement to the Australian Film, Television and Radio School (Council Elections) Regulations 2017

Section 7 defines certain terms used in the Regulations that are not already defined in the Act.

Section 7 provides that when the word ‘Act’ is used, this refers to the *Australian Film Television and Radio School Act*, which is the Act the Regulations are made under.

Section 7 provides that a ballot paper includes a ballot paper in an electronic form. This is defined to provide the returning officer with the option to conduct elections electronically and to provide ballot papers in an electronic form.

Section 7 refers to the term ‘continuing candidate’, which is defined in Schedule 2. The definition is provided in Schedule 2 because the term is directly relevant to the procedure for counting votes set out in this part of the Regulations.

Section 7 also defines an election for the purposes of these Regulations. This helps to set parameters for when these Regulations are intended to apply. An election for the purposes of the Regulations will be the election of a staff member or a student member to Council under paragraphs 8(1)(b) or 8(1)(c) respectively.

Section 7 defines the term ‘returning officer’ by reference to section 10. This is defined because the returning officer is given a number of responsibilities that they must undertake in order for an election to be carried out in accordance with the Regulations.

Finally, section 7 defines a staff member by reference to the Act. The interpretation of a staff member is vital to who is eligible to vote, be nominated and be elected for a staff member position on the Council.

The note for this section also expressly refers to terms defined in the Act, this is because of section 13(1)(b) of the *Legislation Act 2003* which provides that expressions used in an instrument will have the same meaning as in the enabling legislation as in force from time to time.

Division 3 – Means by which elections may be conducted

Section 8 Giving notices etc.

Section 8 provides the process by which notices and other documents are required to be published. It also provides how the returning officer may give a notice, ballot paper, or other document to staff members and students of the School, including notices of an election and notices of the results of an election.

Subsection 8(1) outlines how the returning officer must publish a notice where the Regulations require or permit a notice to be published. A returning officer must publish the notice in at least one of three ways:

- by displaying the notice as a physical copy on a noticeboard at the School; or
- by publishing the notice electronically on the School’s website; or
- by giving the notice to each person who is entitled to vote at the election.

This subsection enables the returning officer to choose how the notice will be published, in a way that is appropriate to how the election will be conducted. The returning officer may choose to use a combination of these publication methods.

Subsection 8(2) outlines how the returning officer is required or permitted to give a notice, ballot paper or other document to a person. The returning officer may give notice, ballot paper or other document to a person by sending it a number of different ways.

These documents can be sent by messenger to a place on the School premises that the returning officer considers appropriate. The returning officer may dispatch the documents to, for example, the office of a staff member to whom the document is to be given.

Alternatively, these documents can also be sent by post to an address that the returning officer considers appropriate. This could be the address for the person that is kept in AFTRS' records following their enrolment or employment, and taking into account any subsequent requests for a change of address.

Alternatively, these documents can also be sent by email. Subsection 8(3) provides that where this instrument requires or permits the returning officer to send a notice, ballot paper or other document to a person by email, the appropriate email address is the official email address within the School's email system that is provided to the person. The returning officer may also send a notice to another appropriate email address. It is intended that this email address would have been provided by the person to the school as an alternate contact email address.

Paragraph 8(2)(b) provides that the returning officer may also inform a person about how they may access the notice, ballot paper or other document using the internet, via any of the methods identified in paragraph 8(2)(a). For example, the returning officer may send an email that provides instructions on how to vote and a unique voter code or hyperlink to an online ballot paper.

Section 9 Elections conducted electronically

Section 9 enables the returning officer to conduct all or part of an election by electronic means, including through the use of a computer program or website and using ballot papers in an electronic form, or by using a computer program to perform steps in the scrutiny of the poll.

A partially electronic election would allow voters to opt for non-electronic voting. This accommodates a transition from an entirely non-electronic system to one that is run partially or fully by electronic means. For example, AFTRS may choose to contract with a provider to establish a website for the purpose of conducting an election. Eligible voters are subsequently provided with a unique code, and are able to log onto the website and make a secure vote.

Paragraph 9(b) allows AFTRS to use a computer program to perform steps in the scrutiny of the poll. For example, the computer program can be used to process the preferences on the ballot papers. Subsection 23(3) also addresses the use of a computer program to perform steps in the scrutiny.

Part 2 – Preparations for elections

Section 10 Returning officer

Section 10 provides that the returning officer for an election conducted under these Regulations is the person in the position of Secretary of the AFTRS Council. This section authorises the returning officer to appoint deputies, in writing, to assist in conducting the election. The returning officer is not required to appoint deputies.

Section 11 Election dates

Section 11 provides that the returning officer is responsible for determining the date of the election, the time at which the poll closes, and the date and time at which nominations for the election close. Nominations must close at least three weeks before the date determined to be the date of the election.

Subsection 11(2) provides that where the election is held to fill a casual vacancy (i.e. the elected person ceases to hold office prior to the expiration of his or her term), the Minister, instead of the returning officer, must determine the date of the election. This is in accordance with subsections 9(2) and 10(3) of the Act.

Section 12 Calling for nominations

Section 12 provides that the returning officer must prepare and publish a written notice of the election no less than 5 weeks before the date of the election. The notice of election must be published in compliance with subsection 8(1) of these Regulations.

The notice must state the number of persons to be elected, state the required qualifications for standing for the election, invite nominations of suitably-qualified persons for election, state the form in which nominations must be made and state the date and time at which nominations close.

Section 13 Nominations

Section 13 provides that the nomination of a candidate for an election must be made by a person who is entitled to vote in the election. The nomination may be made by the candidate himself or herself. A nomination must be made in the prescribed form set out in Form 1 in Schedule 1, which is signed by the nominator and the candidate. A nomination must be made before the close of nominations, as determined under paragraph 11(1)(c) of these Regulations.

Part 3 – Conduct of elections

Division 1 – Elections without balloting

Section 14 Election without voting

Section 14 provides that where, at the close of nominations, the number of persons nominated for election does not exceed the number of persons to be elected, each person nominated is deemed to be elected without voting taking place. For example, if one person is to be elected and there is one nomination for the position, the nominated person is elected without voting taking place.

Division 2 – Balloting

Subdivision A - Balloting

Section 15 Requirement to conduct ballot

Section 15 provides that where, at the close of nominations, the number of persons nominated for election does exceed the number of persons to be elected, the returning officer must conduct a ballot.

Section 16 Ballot papers

Section 16 provides that within 7 days after close of nominations and at least 14 days before the election, the returning officer must give each person entitled to vote at the election:

- a ballot paper (either electronically or a paper copy); and
- a notice that indicates the manner in which the ballot paper must be returned to the returning officer and which specifies the date and time at which the poll closes; and

- if a candidate has, before the close of nominations, supplied to the returning officer a statement not exceeding 150 words relating to his or her candidacy, a copy of that statement.

Ballot papers are required to be in the prescribed form set out in Form 2 in Schedule 1. In the case of an electronic ballot paper however, the returning officer is not required to make the direction to the voter as set out in Form 2. The returning officer may instead include a direction to voters of a similar nature to that in Form 2 that he or she considers appropriate. For example, if a particular website is used to facilitate electronic voting, the appropriate direction may give instructions on how to use the voting system and submit the ballot paper.

The names of candidates for the election must appear on the ballot paper in an order determined by the returning officer by lot.

A person who is entitled to vote at an election may apply to the returning officer personally for a replacement ballot paper. It is contemplated that this subsection would take effect where a person who is entitled to vote is either unintentionally not given a ballot paper (for example, their ballot paper is sent to an incorrect physical or email address, or they become a student or staff member after ballot papers were originally distributed but before the closing of the poll), or their ballot paper is lost or destroyed.

Section 17 Manner of voting

Section 17 provides that each voter in an election must record his or her vote by numbering the candidates he or she wishes to vote for, in cardinal order, on the ballot paper. The voter only needs to enter a preference against the names of candidates that he or she wishes to vote for. The numbers commence with 1, which indicates the voter's first preference, and are entered consecutively thereafter, according to the voter's preferences.

After entering his or her preferences, the voter is to return the ballot paper to the returning officer by the close of poll, the date of which is determined under paragraph 11(1)(b) of these Regulations.

Section 18 Ineligible votes not to be accepted

Section 18 provides that the returning officer must not accept a ballot paper unless they are satisfied that the voter is entitled to vote at the elections and that the voter has only voted once in the election. If the returning officer is not satisfied on both counts, the vote will be ineligible.

This means that a voter that receives a replacement ballot paper under subsection 16(5) is not permitted to vote twice. The returning officer should undertake necessary steps to ensure that they are satisfied that a person has not voted twice. For example, the returning officer might make relevant enquiries to determine whether the ballot paper was received. The returning officer might also, for example, choose to request the person to provide a statutory declaration or other statement that they have lost or never received the ballot paper.

Subdivision B – Scrutiny

Section 19 Scrutiny

Section 19 requires that the result of the poll for an election is ascertained by scrutiny. Scrutiny ensures that the integrity of an election is maintained.

Section 20 Scrutineers

Section 20 provides that a candidate may appoint a scrutineer to represent him or her at the scrutiny of votes. If a candidate appoints a scrutineer, this must be done in a written notice that is signed by the candidate and given to the returning officer before the scrutiny occurs.

Section 21 Objections to ballot papers

Section 21 provides that if a scrutineer objects to a ballot paper in an election on the basis of being informal, the returning officer is required to make a decision whether to admit or reject the ballot paper. The returning officer is permitted to reject a ballot paper as being informal, even if the ballot paper is not objected to by a scrutineer.

Section 22 Informal ballot papers

Section 22 outlines the circumstances in which a ballot paper is considered to be informal. A ballot paper will be considered to be informal if it does not indicate the voter's first preference for a candidate or if a voter indicates a first preference for 2 or more candidates.

A ballot paper will not be considered informal by reason only that the voter has indicated a preference subsequent to first preference more than once, or the voter has omitted a number in the numerical sequence of their preferences after his or her first preference.

However, where a number subsequent to 1 is repeated, the ballot paper must be treated as if the numbers repeated and any preference expressed thereafter had not been entered on the ballot paper. Only preferences expressed before the repeated number will be considered to have been entered.

Likewise, where a number subsequent to 1 is omitted in the sequential order, any number higher than that which has been omitted (i.e. a later preference) will be treated as if they had not been entered on the ballot paper. Only preferences expressed before the omitted number will be considered to have been entered.

Section 23 Conduct of scrutiny

Section 23 sets out the process by which scrutiny must be conducted. Scrutiny is required to commence as soon as practicable after the close of the poll. All scrutineers and any other persons approved by the returning officer may be present at the scrutiny. All proceedings are required to be open to the inspection of scrutineers. The scrutiny may be adjourned for periods of time, as necessary, until the counting of the votes is completed.

The returning officer is required to ascertain the result of the election in accordance with the procedure set out in Schedule 2 of these Regulations.

Where a computer program is used to perform steps in the scrutiny, the requirement that all proceedings of the scrutiny are open to the inspection of the scrutineers is satisfied if scrutineers are entitled to be present when the returning officer receives the results of the computer's scrutiny. Additionally, the scrutineers must be given an opportunity to inspect the results.

Section 24 Recount

Section 24 provides that the returning officer for the election may conduct a recount of the ballot papers received in the election. The returning officer has the discretion to exercise this power at his or her own motion or where requested by a candidate.

Subdivision C – Other provisions

Section 25 Secret ballot

Section 25 provides that the returning officer is responsible for ensuring that the ballot is secret and that the identity of each person voting is kept separately from the person's ballot paper. The returning officer for an election, any deputy that might be appointed by the returning officer, or a scrutineer must not disclose how any voter in the election has voted.

Voters should feel empowered to freely express their opinion when exercising their right to vote for their representative on the Council, with the assurance that identity and vote will not be disclosed.

Division 3 - Results

Section 26 Notification of results

Section 26 provides that the returning officer for an election must, by notice in writing, inform the Council of the result of the election, and publish a notice with the election result in the form for notices prescribed in subsection 8(1).

Part 4 – Transitional provisions

Section 27 Application of this instrument

Section 27 provides that these Regulations do not apply retrospectively. The instrument has prospective application to elections that occur on or after the day this instrument commences.

Schedule 1 Forms

Schedule 1 contains Form 1, which is the prescribed nomination form for election of the Council required by paragraph 13(b). This form is to be used by a person entitled to vote to either nominate himself or herself, or to nominate another person who is eligible to vote.

Schedule 1 also contains Form 2, which is the prescribed ballot paper for the election of the staff or student member of the Council required by subsection 16(2). Form 2 contains a direction to the voter that the returning officer may use his or her discretion to remove for electronic voting, as appropriate.

Schedule 2 Procedure for counting votes

Schedule 2 provides the procedure for counting votes for the purposes of subsection 23(2).

The returning officer is required to count the first preference votes given for each candidate on all unrejected ballot papers. If one candidate has received more than half of the total number of first preference votes, he or she is elected. If two candidates have both received half of the total number of first preference votes, the returning officer must then decide by lot which candidate is elected.

If there is still no candidate elected after the counting of first preferences, the candidate who received the fewest first preference votes will be excluded. The returning officer must then transfer the whole of the eliminated candidates' ballot papers to the candidates who are still eligible, based on the voter's next available preference. If two candidates have received the same number of votes and one of them must be excluded, the returning officer will determine which candidate will be excluded by lot.

The process of transferring the votes of the candidate who has received the fewest votes according to remaining preferences will continue until one candidate has received more than half of the votes remaining in the count. This candidate is elected. If, as a result of this process of transferring votes at

any stage of the scrutiny, two continuing candidates have both received half of the remaining votes, the returning officer must decide by lot which candidate is elected.

A ballot paper will not be transferred further to another candidate if, on transfer, it is found that the ballot paper does not provide a preference for a candidate that has not been eliminated, shows the same number against the voter's next preference opposite 2 or more candidates, or where the voter has omitted their next preference in the numerical sequence.

Schedule 3 Repeals

Schedule 3 repeals the sunsetting *Australian Film, Television and Radio School (Elections) Regulations*.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Australian Film, Television and Radio School (Council Elections) Regulations 2017

These Regulations are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Regulations

The Australian Film, Television and Radio School (Council Elections) Regulations 2017 (the new Regulations) is a legislative instrument for the purposes of the *Legislation Act 2003*.

The new Regulations are prepared under paragraphs 8(1)(b) and 8(1)(c), and section 51 of the *Australian Film, Television and Radio School Act 1973* (the Act), and repeal and remake the Australian Film, Television and Radio School (Elections) Regulations (the sunseting Regulations), due to sunset on 1 October 2017.

The sunseting Regulations specify the process by which student and staff members are elected to the Australian Film Television and Radio School (AFTRS) Council. Consultation with the AFTRS has determined that the sunseting Regulations are still required and will therefore be remade.

The new Regulations contain amendments to reflect the practice that members of the AFTRS Council that are appointed from Convocation are no longer elected. Further, the Regulations will allow the AFTRS to conduct elections in whole or in part by electronic means.

Human rights implications

Australia is a signatory to the International Covenant on Civil and Political Rights (ICCPR), which is one of the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. Article 25 of the ICCPR protects the rights of citizens to take part in the conduct of public affairs, directly or through freely chosen representatives.

The Regulations do not engage Article 25 of the ICCPR. The United Nations Human Rights Committee has stated that the conduct of public affairs relates to the exercise of legislative, executive and administrative powers by the constituent parts of government, and covers all aspects of public administration. Article 25 addresses the right to participate in the conduct and exercise of political powers.¹

The role of a student or staff member on the AFTRS Council does not involve the conduct of public affairs in the sense contemplated by Article 25 of the ICCPR. Rather, AFTRS is a

¹ United Nations Human Rights Committee General Comment No.25, paragraph 5.

body corporate established by the Act for a public educational purpose. It is a separate legal entity from the government.

The Regulations do not engage any of the applicable rights or freedoms.

Conclusion

The Regulations are compatible with human rights as they do not raise any human rights issues.