

South Australia

Optometry Practice (Elections) Regulations 2007

under the *Optometry Practice Act 2007*

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Legislative history

1—Short title

These regulations may be cited as the *Optometry Practice (Elections) Regulations 2007*.

2—Commencement

These regulations will come into operation on the day on which section 79 of the *Optometry Practice Act 2007* comes into operation.

3—Interpretation

- (1) In these regulations, unless the contrary intention appears—
Act means the *Optometry Practice Act 2007*;

business day means any day other than a Saturday, Sunday or public holiday;

closing day, in relation to an election, means the day on which nomination of candidates for the election closes;

Electoral Commissioner means the person for the time being holding, or acting in, the office of the Electoral Commissioner under the *Electoral Act 1985*;

polling day, in relation to an election, means the day on which voting at the election closes;

returning officer—see regulation 4;

voter means a person entitled to vote at an election conducted under these regulations.

- (2) The close of voting for an election is 9.30 am on polling day.

4—Returning officer

The returning officer for an election under these regulations will be the Electoral Commissioner.

5—Election to be conducted by returning officer

- (1) An election for the purposes of section 6(1)(a) of the Act will be conducted by the returning officer—
- (a) in accordance with these regulations; and
 - (b) to the extent that these regulations fail to deal with a matter that, in the opinion of the Electoral Commissioner, is necessary for the proper conduct of the election—in accordance with rules determined by the Electoral Commissioner in relation to that matter.
- (2) The Board is responsible for the costs and expenses incurred by the returning officer in conducting an election.

6—Appointment of closing day and polling day

The returning officer will fix—

- (a) a day as closing day for an election; and
- (b) a day as polling day for an election.

7—Advertisement of election

- (1) At least 14 days before the closing day for an election the returning officer must cause an advertisement relating to the election to be placed in a newspaper circulating generally throughout the State.
- (2) The advertisement must set out—
- (a) the day fixed as polling day; and
 - (b) the number of vacancies to be filled; and
 - (c) an invitation for nominations for the vacancies to be filled; and
 - (d) details about how a nomination may be made; and
 - (e) the day fixed as closing day.

8—Registrar to prepare roll

- (1) The Registrar is responsible for the preparation of a voters roll for the purposes of an election.

Note—

Every person who is an optometrist at the time the voters roll is prepared is entitled to vote—see section 7(2) of the Act.

- (2) The voters roll to be used in a particular election must reflect entitlements to vote as they exist at 5 pm on the third business day after the day on which the advertisement relating to the election is published.
- (3) The Registrar must supply the returning officer with sufficient copies of the voters roll, certified by the Registrar, for use at an election.
- (4) The voters roll may be supplied to the returning officer in electronic form, or in another manner agreed between the Registrar and the returning officer.

9—Nomination

- (1) The returning officer must prepare a nomination form for the purposes of an election (in a form determined by the returning officer).

Note—

Every optometrist is eligible to be a candidate for election—see section 6(1) of the Act.

- (2) An optometrist may be nominated as a candidate for an election by lodgement of a nomination form with the returning officer by 12 noon on closing day.
- (3) A nomination must be made by 2 persons who are entitled to vote at the election.
- (4) A candidate for election must—
 - (a) make a declaration on the nomination form that he or she is eligible to be elected at the election; and
 - (b) signify his or her consent by signing the nomination form.
- (5) A nomination must be accompanied by—
 - (a) a profile of the candidate; and
 - (b) other information required by the returning officer.
- (6) A profile must comply with the following requirements:
 - (a) the profile must be limited to relevant professional information about the candidate and other information directly relevant to the functions or operations of the Board under the Act;
 - (b) the profile must be in typed form or in legible handwriting and comply with other requirements as to form determined by the returning officer;
 - (c) the profile must not exceed 200 words;
 - (d) the profile must be signed and dated by the candidate (but this signature and date will not form part of the profile for the purposes of the election).

- (7) The returning officer may reject a nomination if, in the opinion of the returning officer, the name under which the candidate is nominated—
 - (a) is obscene; or
 - (b) is frivolous; or
 - (c) appears to have been assumed for an ulterior purpose.
- (8) A nomination is invalid if—
 - (a) the nomination is not made by the use of a nomination form under this regulation; or
 - (b) the nomination form is not completed—
 - (i) in accordance with instructions contained in the form; or
 - (ii) in accordance with the requirements of this regulation; or
 - (c) the nomination form, the candidate profile and any other required information are not received by the returning officer by 12 noon on closing day.
- (9) A dispute as to the validity of a nomination will be determined summarily by the returning officer.
- (10) A nominated candidate may at any time before the close of nominations, by written notice signed by the candidate and given to the returning officer, withdraw the nomination.

10—Uncontested elections

- (1) If, after nominations have closed, it appears that the number of candidates nominated to contest the election does not exceed the number of persons required to be elected, the returning officer must declare the nominated candidate or candidates elected.
- (2) Within 7 days after making the declaration, the returning officer must cause a notice of the declaration to be placed in a newspaper circulating generally throughout the State.
- (3) The notice must set out—
 - (a) the date of the declaration; and
 - (b) the name of each successful candidate.
- (4) If, after nominations have closed, it appears that the number of candidates nominated to contest the election is less than the number of persons required to be elected, the returning officer, in addition to making a declaration and publishing a notice under subregulations (1) and (2), must extend the period for nominations for the remaining vacancy or vacancies by a period (not exceeding 7 days) determined by the returning officer and may fix a new day as polling day.
- (5) If the returning officer is required to take action under subregulation (4), the returning officer must at the earliest opportunity cause a notice relating to the matter to be placed in a newspaper circulating generally throughout the State.
- (6) The notice must set out—
 - (a) the day fixed as polling day; and
 - (b) the number of vacancies left to be filled; and

- (c) an invitation for nominations for those vacancies; and
 - (d) details about how a nomination may be made; and
 - (e) the day by which nominations must be received.
- (7) These regulations will then apply in the same manner as they applied (or would have applied) to earlier nominations.
- (8) If the number of candidates nominated exceeds the required number of candidates, an election will be held to fill the relevant vacancies.

11—Preparation of ballot papers

- (1) If an election is to be held, the returning officer must prepare a ballot paper showing the names of all candidates for election (on the basis of information provided to the returning officer as part of the nomination process).
- (2) The ballot paper must be prepared as soon as is reasonably practicable after the closing day for the election.
- (3) The names of the candidates must be arranged on the ballot paper, 1 under the other, in an order determined by lot.
- (4) A square must be placed to the left of each name appearing on the ballot paper.
- (5) A ballot paper will otherwise be in a form determined by the returning officer.

12—Issue of voting papers

- (1) The returning officer must, at least 14 days before polling day for an election, send by post to every voter—
 - (a) a ballot paper (authenticated to the satisfaction of the returning officer); and
 - (b) a statement in writing setting out—
 - (i) instructions for the completion of a ballot paper; and
 - (ii) the manner in which the ballot paper is to be returned; and
 - (c) a set of candidate profiles in a form determined by the returning officer; and
 - (d) an opaque envelope bearing a declaration in a form determined by the returning officer, to be completed by the voter, declaring that the ballot paper contained in the envelope contains his or her vote and that he or she has not already voted at the election.
- (2) The declaration must appear on a tear-off extension to the envelope flap.
- (3) The envelope must be—
 - (a) a pre-paid envelope addressed to the returning officer; or
 - (b) accompanied by a pre-paid envelope addressed to the returning officer.
- (4) If a person to whom voting papers are issued desires to vote at the relevant election, the following procedures must be followed:
 - (a) the voter must mark his or her vote in the manner prescribed by these regulations on the ballot paper supplied;

- (b) the voter must then fold the ballot paper and place the folded ballot paper in the envelope;
 - (c) the voter must then seal the envelope;
 - (d) the voter must then ensure that the declaration on the flap is completed and signed by the voter;
 - (e) the sealed envelope must then be delivered to the returning officer (by post or personally) not later than the close of voting on polling day.
- (5) If the returning officer is satisfied that voting papers issued to a voter—
- (a) have not been received by the voter; or
 - (b) have been lost; or
 - (c) have been inadvertently spoiled,
- the returning officer may issue fresh voting papers to the voter (before the close of voting).
- (6) The issue of fresh voting papers automatically cancels the original voting papers.

13—Method of voting

- (1) To make a formal vote at an election a person must make a vote on the ballot paper—
- (a) if only 1 candidate is required to be elected—by placing the number 1 in the square opposite the name of the candidate of the voter's first preference and, if the voter so desires, by placing the number 2 and consecutive numbers in the squares opposite the names of other candidates in the order of the voter's preference for them;
 - (b) if more than 1 candidate is required to be elected—by placing consecutive numbers beginning with the number 1 in the squares opposite the names of candidates in the order of the voter's preference for them until the voter has indicated a vote for a number of candidates equal to the number of candidates required to be elected and then, if the voter so desires, by continuing to place consecutive numbers for 1 or more additional candidates in the order of the voter's preference.
- (2) A tick or cross appearing on a ballot paper is equivalent to the number 1.
- (3) If—
- (a) a series of numbers (starting from the number 1) appearing on a ballot paper is non-consecutive by reason only of the omission of 1 or more numbers from the series or the repetition of a number (not being the number 1); and
 - (b) if more than 1 candidate is required to be elected—the numbers are at least consecutive up to the number of candidates required to be elected,
- the ballot paper is not informal and the votes are valid up to the point at which the omission or repetition occurs.
- (4) A ballot paper is not informal by reason of non-compliance with this regulation if the voter's intention is clearly indicated on the ballot paper.

14—Scrutineers

- (1) Each candidate at an election may appoint a person to be a scrutineer for the purposes of the election.
- (2) A candidate in an election is not eligible for appointment as a scrutineer for the election (and a candidate may not be present at the scrutiny).
- (3) No more than 1 scrutineer may be appointed for each candidate.
- (4) The appointment of a scrutineer may be made by written notice served on the returning officer (personally or by post).

15—Arranging papers for counting

- (1) The returning officer will, as soon as practicable after the close of voting for an election, with the assistance of persons appointed or nominated by the returning officer, and in the presence of scrutineers or officers of the Board who may be present, ensure that all voting papers returned for the purposes of the election in accordance with these regulations are made available under this regulation.
- (2) The returning officer will, for the purposes of the election (and with such assistance as may be necessary and appropriate)—
 - (a) examine the declaration on each envelope validly returned under these regulations and determine which votes are to be accepted for further scrutiny; and
 - (b) tear off the extensions to the envelope flaps on the envelopes accepted; and
 - (c) rearrange the envelopes that no longer bear tear-off extensions so that the anonymity of voters is maintained; and
 - (d) remove the ballot papers from those envelopes; and
 - (e) examine the ballot papers and reject informal ballot papers; and
 - (f) arrange all unrejected ballot papers into appropriate parcels for counting.

16—Method for counting based on principles of proportional representation

The returning officer will conduct the counting of votes in an election in accordance with the method set out in Schedule 1.

17—Death of candidate

If a candidate dies between the close of nominations and polling day, the election will not fail and a vote indicated on a ballot paper opposite the name of the deceased candidate must be counted to the candidate next in order of the voter's preference, and the numbers indicating subsequent preferences will be altered accordingly.

18—Declaration of result of election

- (1) When all vacancies have been filled by the making of provisional declarations under Schedule 1, the returning officer will formally declare the result of the election.
- (2) Within 7 days after making a formal declaration the returning officer must—
 - (a) provide written notification of the result to the Minister; and

- (b) cause a notice setting out the result to be published in a newspaper circulating generally throughout the State.

19—Computer counting

- (1) The returning officer may decide to use a computer program to carry out steps involved in the recording, scrutiny or counting of votes in an election.
- (2) However, the returning officer cannot do so unless the returning officer is reasonably satisfied that the proper use of the program would produce the same result in the recording, scrutiny or counting of votes as the result that would be achieved if the program were not to be used.
- (3) If a computer program is used, the method of counting votes under Schedule 1 may be modified according to the determination of the returning officer.

Schedule 1—Method of counting votes

1—Interpretation

- (1) In this Schedule—

continuing candidate means a candidate not already elected or excluded from the count;

election of a candidate means the making by the returning officer of a provisional declaration that the candidate has been elected, and *elected* has a corresponding meaning;

surplus votes of an elected candidate means the excess (if any) over the quota of the elected candidate's votes.

- (2) For the purposes of clause 2, a reference to votes of or obtained or received by a candidate includes votes obtained or received by the candidate on transfer under that clause.

2—Method of counting votes

The conduct of the counting of the votes in an election will occur according to the following method:

- (a) the number of first preference votes given for each candidate and the total number of all such votes must be ascertained and a quota determined by—
 - (i) dividing the total number of first preference votes by 1 more than the number of candidates required to be elected; and
 - (ii) increasing the quotient so obtained (disregarding any remainder) by 1,

and, if a candidate has received a number of first preference votes equal to or greater than the quota, the returning officer must make a provisional declaration that the candidate has been elected;

- (b) if the total number of all first preference votes does not exceed 150, the number of votes of a particular kind contained in the ballot papers will, for the purposes of this clause (including paragraph (a)), be taken to be the number obtained by multiplying the number of votes of that kind contained in the ballot papers by 100;
- (c) unless all the vacancies have been filled, the surplus votes of each elected candidate must be transferred to the continuing candidates as follows:
 - (i) the number of surplus votes of the elected candidate must be divided by the number of first preference votes received by that candidate and the resulting fraction will be the transfer value;
 - (ii) the total number of the first preference votes for the elected candidate that are contained in ballot papers that express the next available preference for a particular continuing candidate must be multiplied by the transfer value, the number so obtained (disregarding any fraction) must be added to the number of first preference votes of the continuing candidate and all those ballot papers must be transferred to the continuing candidate,

and, if a continuing candidate has received a number of votes equal to or greater than the quota on the completion of a transfer, the returning officer must make a provisional declaration that the candidate has been elected;

- (d) unless all the vacancies have been filled, the surplus votes (if any) of a candidate elected under paragraph (c), or elected subsequently under this paragraph, must be transferred to the continuing candidates in accordance with paragraph (c)(i) and (ii) and, if a continuing candidate has received a number of votes equal to or greater than the quota on the completion of a transfer, the returning officer must make a provisional declaration that the candidate has been elected;
- (e) if a continuing candidate has received a number of votes equal to or greater than the quota on the completion of a transfer under paragraph (c) or (d) of the surplus votes of a particular elected candidate, no votes of any other candidate may be transferred to the continuing candidate;
- (f) for the purposes of the application of paragraph (c)(i) and (ii) in relation to a transfer under paragraph (d) or (h) of the surplus votes of an elected candidate, each ballot paper of the elected candidate that was obtained on a transfer under this clause must be dealt with as if any vote it expressed for the elected candidate were a first preference vote, as if the name of any other candidate previously elected or excluded had not been on the ballot paper and as if the numbers indicating subsequent preferences had been altered accordingly;
- (g) if, after the counting of first preference votes or the election of a candidate and the transfer of the surplus votes (if any) of the elected candidate that are capable of being transferred, no candidate has, or less than the number of candidates required to be elected have, received a number of votes equal to the quota, the candidate who has the fewest votes must be excluded and all the excluded candidate's votes must be transferred to the continuing candidates as follows:

- (i) the total number of the first preference votes for the excluded candidate that are contained in ballot papers that express the next available preference for a particular continuing candidate must be transferred, each first preference vote at a transfer value of 1, to the continuing candidate and added to the number of votes of the continuing candidate and all those ballot papers must be transferred to the continuing candidate;
 - (ii) the total number (if any) of other votes obtained by the excluded candidate on transfers under this clause must be transferred from the excluded candidate in the order of the transfers on which they were obtained, the votes obtained on the earliest transfer being transferred first, as follows:
 - (A) the total number of votes transferred to the excluded candidate from a particular candidate that are contained in ballot papers that express the next available preference for a particular continuing candidate must be multiplied by the transfer value at which the votes were so transferred to the excluded candidate;
 - (B) the number so obtained (disregarding any fraction) must be added to the number of votes of the continuing candidate;
 - (C) all those ballot papers must be transferred to the continuing candidate;
- (h) if a continuing candidate has received a number of votes equal to or greater than the quota on the completion of a transfer under paragraph (g) or (i) of votes of an excluded candidate, the returning officer must make a provisional declaration that the candidate has been elected and, unless all the vacancies have been filled, the surplus votes (if any) of the candidate so elected must be transferred in accordance with paragraph (c)(i) and (ii), except that, if the candidate so elected is elected before all the votes of the excluded candidate have been transferred, the surplus votes (if any) of the candidate so elected must not be transferred until the remaining votes of the excluded candidate have been transferred in accordance with paragraph (g)(i) and (ii) to continuing candidates;
- (i) subject to paragraph (k), if, after the exclusion of a candidate and the transfer of the votes (if any) of the excluded candidate that are capable of being transferred, no continuing candidate has received a number of votes greater than the quota, the continuing candidate who has the fewest votes must be excluded and his or her votes transferred in accordance with paragraph (g)(i) and (ii);
- (j) if a candidate is elected as a result of a transfer of the first preference votes of an excluded candidate or a transfer of all the votes of an excluded candidate that were transferred to the excluded candidate from a particular candidate, no other votes of the excluded candidate may be transferred to the candidate so elected;

- (k) in respect of the last vacancy for which 2 continuing candidates remain, the returning officer must make a provisional declaration that the continuing candidate who has the larger number of votes has been elected despite the fact that number is below the quota and, if those candidates have the same number of votes, the candidate with the larger number of votes at the last preceding count or transfer will be taken to be elected and, if the number of votes at that count or transfer was equal, the returning officer must, in the presence of any scrutineers who may be present, draw lots to determine which of the candidates is to be elected;
- (l) despite any other provision of this clause, if, on the completion of a transfer of votes under this clause, the number of continuing candidates is equal to the number of remaining unfilled vacancies, the returning officer must make a provisional declaration that those candidates have been elected;
- (m) for the purposes of this clause—
 - (i) the order of election of candidates will be taken to be in accordance with the order of the count or transfer as a result of which they were elected, the candidates (if any) elected on the count of first preference votes being taken to be the earliest elected; and
 - (ii) if 2 or more candidates are elected as a result of the same count or transfer, the order in which they will be taken to have been elected will be in accordance with the relative numbers of their votes, the candidate with the largest number of votes being taken to be the earliest elected but, if any 2 or more of those candidates each have the same number of votes, the order in which they will be taken to have been elected will be taken to be in accordance with the relative numbers of their votes at the last count or transfer before their election at which each of them had a different number of votes, the candidate with the largest number of votes at that count or transfer being taken to be the earliest elected and, if there has been no such count or transfer, the returning officer must, in the presence of any scrutineers who may be present, draw lots to determine the order in which they will be taken to have been elected;
- (n) subject to paragraphs (o) and (p), if, after a count or transfer under this clause, 2 or more candidates have surplus votes, the order of transfers of the surplus votes of those candidates will be in accordance with the relative sizes of the surpluses, the largest surplus being transferred first;
- (o) subject to paragraph (p), if, after a count or transfer under this clause, 2 or more candidates have equal surpluses, the order of transfers of the surplus votes of those candidates will be in accordance with the relative numbers of votes of those candidates at the last count or transfer at which each of those candidates had a different number of votes, the surplus of the candidate with the largest number of votes at that count or transfer being transferred first but, if there has been no such count or transfer, the returning officer must, in the presence of any scrutineers who may be present, draw lots to determine the order in which the surpluses will be dealt with;

- (p) if, after a count or transfer under this clause, a candidate obtains surplus votes, those surplus votes will not be transferred before the transfer of surplus votes obtained by any other candidate on an earlier count or transfer;
- (q) if the candidate who has the fewest votes is required to be excluded and 2 or more candidates each have the fewest votes, whichever of those candidates had the fewest votes at the last count or transfer at which each of those candidates had a different number of votes will be excluded but, if there has been no such count or transfer, the returning officer must, in the presence of any scrutineers who may be present, draw lots to determine which candidate will be excluded;
- (r) if a candidate is elected by reason that the number of first preference votes received, or the aggregate of first preference votes received and all other votes obtained on transfers under this clause, is equal to the quota, all the ballot papers expressing those votes must be set aside as finally dealt with;
- (s) a ballot paper must be set aside as exhausted where on a transfer it is found that the paper expresses no preference for a continuing candidate;
- (t) for the purposes of this clause, a transfer under paragraph (c), (d) or (h) of the surplus votes of any elected candidate, a transfer in accordance with paragraph (g)(i) of all first preference votes of an excluded candidate or a transfer in accordance with paragraph (g)(ii) of all the votes of an excluded candidate that were transferred from a particular candidate will each be regarded as constituting a separate transfer.

Schedule 2—Transitional provision

An election may be held for the purposes of making appointments to the Board pursuant to the *Acts Interpretation Act 1915* prior to the commencement of section 6 of the Act and for the purposes of such an election—

- (a) a reference in these regulations to the **Board** is to be taken to be a reference to the Board as constituted under the repealed Act; and
- (b) a reference in these regulations to an **optometrist** is to be taken to be a reference to a person who is a registered optometrist under the repealed Act; and
- (c) a reference in these regulations to the **Registrar** is to be taken to be a reference to the person holding the office of Registrar of the Board under the repealed Act.

Legislative history

Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Revocation of regulations

The *Optometry Practice (Elections) Regulations 2007* were revoked by Sch 1 cl 1(h) of the *Health Practitioner Regulation National Law (South Australia) Regulations 2010* on 1.7.2010.

Principal regulations

Year	No	Reference	Commencement
2007	196	<i>Gazette</i> 5.7.2007 p2976	12.7.2007: r 2