



New South Wales

# Fisheries Management (General) Amendment (Management Advisory Committees) Regulation 1997

under the

Fisheries Management Act 1994

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Fisheries Management Act 1994*.

Bob Martin

Minister for Fisheries and Minister for Mineral Resources

## Explanatory note

The object of this Regulation is to make provision for the establishment of Management Advisory Committees (MACs) for share management fisheries and restricted fisheries in accordance with amendments made to the *Fisheries Management Act 1994* by the *Fisheries Management Amendment (Advisory Bodies) Act 1996*.

The Regulation provides for the composition of MACs, the procedure for election of elected members of MACs, the term of office of members, vacancies in the office of members and the procedure for meetings of MACs.

The Regulation also contains amendments that are consequential to the abolition of the New South Wales Commercial Fishing Advisory Council ("CFAC"), CFAC Regional Advisory Committees and the New South Wales Recreational Fishing Advisory Council ("RFAC") by the Amending Act.

This Regulation is made under the *Fisheries Management Act 1994*, including section 230 and section 231.

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# Fisheries Management (General) Amendment (Management Advisory Committees) Regulation 1997

## 1 Name of Regulation

This Regulation is the *Fisheries Management (General) Amendment (Management Advisory Committees) Regulation 1997*.

## 2 Amendment of Fisheries Management (General) Regulation 1995

The *Fisheries Management (General) Regulation 1995* is amended as set out in Schedule 1.

## 3 Repeal

This Regulation is repealed (and the *Fisheries Management (General) Regulation 1995* is restored as it was immediately before it was amended by this Regulation as if this Regulation had not been made) if the *Fisheries Management (General) Amendment (Restricted Fisheries) Regulation 1997* is disallowed under section 41 of the *Interpretation Act 1987*.

## 4 Notes

The explanatory note does not form part of this Regulation.

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## Schedule 1 Amendments

(Clause 3)

**[1] Clause 83 Priority between commercial fishers using nets in waters other than inland waters**

Omit “after consultation with the local CFAC Regional Advisory Committee” from clause 83 (3).

**[2] Clause 86 Preliminary determination by local fisheries officer**

Omit “is to be made after consultation with the local CFAC Regional Advisory Committee and” from clause 86 (2).

**[3] Clause 99 Preliminary determination by local fisheries officer**

Omit clause 99 (2).

**[4] Clause 104 Exemption from requirement to be personally present**

Omit clause 104 (1) (a) and (b). Insert instead:

- (a) a meeting of a Management Advisory Committee in the capacity of member of that Committee, or

**Clause 135 Who may hold commercial fishing licence**

Omit clause 135 (1) (d).

**Clause 135 (1) (f)**

Insert at the end of clause 135 (1):

- (f) in the case of a Class 5 licence, an individual who satisfies the Minister that he or she (either alone or together with other individuals) owns a fishing business and that:
  - (i) because of that fishing business, the individual would be entitled, if he or she held a Class 1, 2 or 3 commercial fishing licence, to an endorsement in a restricted fishery or a share management fishery, or would be likely to be entitled to such an endorsement, and

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- (ii) the individual requires the licence in order to be eligible to be elected as a member of a Management Advisory Committee and to vote in an election of members of a Management Advisory Committee.

#### **[7] Clause 135 (1A)**

Insert after clause 135 (1):

- (1A) If more than one individual owns a fishing business referred to in clause 135 (1) (f), only one of them may be issued with a Class 5 commercial fishing licence in respect of the business.

#### **[8] Clause 136 Fee to accompany application for commercial fishing licence**

Insert “or Class 5” after “Class 4” in clause 136 (b).

#### **[9] Clause 137 Grounds for refusal to issue commercial fishing licence to otherwise eligible applicant**

Omit “clause 135 (d) or (e)” from clause 137 (2).  
Insert instead “clause 135 (1) (e) or (f)”.

#### **[10] Clause 139 Renewal of commercial fishing licence**

Insert “or Class 5” after “Class 4” in clause 139 (2) (b).

#### **[11] Clause 139 (7) and (8)**

Insert “or Class 5” after “Class 4” wherever occurring.

#### **[12] Clause 141 Classes of commercial fishing licence**

Omit “clause 135 (a), (b), (c), (c1), (c2), (c3), (c4) or (d)” from the matter relating to a Class 3 commercial fishing licence.  
Insert instead “clause 135 (1) (a), (b), (c), (c1), (c2), (c3) or (c4)”.



*endorsement* means an endorsement on a commercial fishing licence that authorises a person to take fish for sale in a restricted fishery but does not include the classes of endorsement provided for by Division 4B of Part 8 (other than a skipper's endorsement under clause 212R).

*industry member*, of a MAC, means a member of a MAC who is elected and appointed pursuant to clause 230 (2) (a) of the Act.

*MAC* means a Management Advisory Committee.

*new restricted fishery* means any of the following restricted fisheries:

- (a) the ocean prawn trawl restricted fishery,
- (b) the ocean fish trawl restricted fishery,
- (c) the ocean trap and line restricted fishery,
- (d) the estuary general restricted fishery,
- (e) the estuary prawn trawl restricted fishery.

*Table* means the Table at the end of clause 231.

- (2) The notes to the Table (at the end of the Table) form part of this Regulation.

### 231 Composition of MAC

- (1) A MAC that is established for a share management fishery that is specified in column 1 of Part A of the Table is to be comprised of
  - (a) the number of industry members set out in column 2 next to the fishery concerned, elected in accordance with Division 3, and
  - (b) the members appointed by the Director pursuant to section 230 (2) (b) of the Act.
- (2) A MAC that is established for a restricted fishery that is specified in column 1 of Part B of the Table is to be comprised of
  - (a) the number of industry members set out in column 2 next to the fishery concerned, elected in accordance with Division 3, and

- (b) the members appointed by the Director pursuant to section 230 (2) (b) of the Act.

A MAC for such a fishery is to be composed of industry members representing commercial fishers who hold an endorsement in the fishery of the type specified in column 3 of Part B of the Table next to the fishery concerned.

**Note.** The number of appointed members of a MAC is to be less than the number of industry members of the MAC—see clause 261 (2).

### Table Composition of MACs (industry members)

#### Part A Share management fisheries

Column 1	Column 2
Name of fishery	Number of industry members
Abalone share management fishery	5
Lobster share management fishery	5

#### Part B Restricted fisheries

Column 1	Column 2	Column 3
Name of fishery	Number of industry members	Fishers to be represented
Ocean hauling restricted fishery	8	7 members representing commercial fishers who hold a class 1 endorsement (a hauling net endorsement that authorises a person to act as skipper) in each region of the fishery (that is, 1 member for each region) 1 member representing commercial fishers who hold a class C endorsement (a purse seine net endorsement)

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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Name of fishery</b>	<b>Number of industry members</b>	<b>Fishers to be represented</b>
Ocean prawn trawl restricted fishery	5	<p>1 member representing commercial fishers who hold an endorsement in the upper north coast region of the fishery</p> <p>1 member representing commercial fishers who hold an endorsement in the Clarence region of the fishery</p> <p>1 member representing commercial fishers who hold an endorsement in the north coast region of the fishery</p> <p>1 member representing commercial fishers who hold an endorsement in the central region of the fishery</p> <p>1 member representing commercial fishers who hold an endorsement in the metropolitan, upper south coast or lower south coast regions of the fishery</p>
Ocean fish trawl restricted fishery	4	<p>3 members representing commercial fishers who hold an endorsement in the northern region of the fishery</p> <p>1 member representing commercial fishers who hold an endorsement in the southern region of the fishery</p>
Ocean trap and line restricted fishery	7	<p>4 members representing commercial fishers who are resident in the north of the State, with 1 representing holders of a demersal fish trap endorsement, 1 representing holders of a line fishing (eastern zone) endorsement, 1 representing holders of a line fishing (western zone) endorsement and 1 representing holders of a spanner crab endorsement</p>

Column 1	Column 2	Column 3
Name of fishery	Number of industry members	Fishers to be represented
		3 members representing commercial fishers who are resident in the south of the State, with 1 representing holders of a demersal fish trap endorsement, 1 representing holders of a line fishing (eastern zone) endorsement and 1 representing holders of a line fishing (western zone) endorsement
Estuary general restricted fishery	7	7 members representing commercial fishers who hold an endorsement in each region of the fishery (that is, 1 member for each region)
Estuary prawn trawl restricted fishery	5	5 members representing commercial fishers who hold an endorsement in each fishery that, by virtue of clause 11 of Schedule 7 of the Act, was taken to be a restricted fishery (that is, 1 member for each fishery)

**Notes to Table**

- (1) For the purposes of the ocean fish trawl restricted fishery:  
**northern region** of the fishery means that part of the waters that are comprised in the fishery that are north of a line drawn due east from Barrenjoey Point.  
**southern region** of the fishery means that part of the waters that are comprised in the fishery that are south of a line drawn due east from Barrenjoey Point.
- (2) For the purposes of the ocean trap and line restricted fishery:  
**north of the State** means that part of the State lying generally to the north of a line drawn due east and due west from Barrenjoey Point.  
**south of the State** means that part of the State lying generally to the south of a line drawn due east and due west from Barrenjoey Point.

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- (3) For the purposes of the ocean prawn trawl restricted fishery, the estuary general restricted fishery and the ocean hauling restricted fishery, the following are the regions of those fisheries:
- Upper north coast. That part of the State lying generally between the border between the States of Queensland and New South Wales and the parallel 29°15' south latitude.
  - Clarence. That part of the State lying generally between the parallel 29°15' south latitude and the parallel 29°45' south latitude.
  - North coast. That part of the State lying generally between the parallel 29°45' south latitude and the parallel 31°44' south latitude.
  - Central. That part of the State lying generally between the parallel 31°44' south latitude and the parallel 33°25' south latitude.
  - Metropolitan. That part of the State lying generally between the parallel 33°25' south latitude and the parallel 34°20' south latitude.
  - Upper south coast. That part of the State lying generally between the parallel 34°20' south latitude and the parallel 35°25' south latitude.
  - Lower south coast. That part of the State lying generally between the parallel 35°25' south latitude and the border between the States of New South Wales and Victoria.
- (4) For the purposes of the Table, a fisher holds an endorsement in a particular part of a fishery if the endorsement authorises the holder to take fish for sale in that part of the fishery.

#### 232 Qualifications for election to a MAC

- (1) **Share management fisheries.** In order to qualify for election to a position as industry member on a MAC for a share management fishery, a person must be a shareholder in the fishery or, if a shareholder is not a natural person, a person nominated by the shareholder. A shareholder is not entitled to more than one nominee under this provision.
- (2) **Restricted fisheries.** In order to qualify for election to a position as industry member on a MAC for a restricted fishery specified in column 1 of Part B of the Table a

person must hold an endorsement of the same type as the commercial fishers he or she seeks to represent (as specified next to the fishery concerned in column 3 of Part B of the Table). This provision is subject to subclause (3).

- (3) **New restricted fisheries.** This subclause applies only in respect of the first election of industry members of a MAC. In order to qualify for election to a position on a MAC for a new restricted fishery, or for a position representing holders of a purse seine net endorsement on a MAC for the ocean hauling restricted fishery, a person must:
- (a) hold an endorsement of the same type as the commercial fishers he or she seeks to represent (as specified next to the fishery concerned in column 3 of Part B of the Table), or
  - (b) have applied to the Director, on or before 1 March 1997, for such an endorsement in the fishery.

If the person is notified by the Director, prior to the date notice of the election is given under section 238, that his or her application for such an endorsement was unsuccessful, the person is not qualified for election to a position on the MAC.

**Note.** Under section 230 (2) of the Act, only commercial fishers can be elected to a MAC.

### 233 General restrictions on election to a MAC

- (1) A person is not qualified to be elected to a position of industry member on a MAC if the person:
  - (a) is already a member of that MAC (unless the person is seeking re-election to the MAC) or another MAC, or
  - (b) is already a candidate for election to any other MAC.
- (2) Officers and employees of NSW Fisheries are not qualified to be elected to a position of industry member on a MAC.

### 234 Qualifications to vote

- (1) **Share management fisheries.** In order to be qualified to vote in an election for the position of industry member on a MAC for a share management fishery, a person must be a shareholder in the fishery or a person who is likely to be a shareholder in the fishery.
- (2) **Restricted fisheries.** In order to be qualified to vote in an election for a position of industry member on a MAC for a restricted fishery or proposed restricted fishery, a person must hold an endorsement in the restricted fishery or be a person who is likely to hold an endorsement in the restricted fishery. If the industry member to be elected is to represent commercial fishers who hold a particular type of endorsement in the fishery (as specified in column 3 of Part B of the Table in relation to each fishery), only persons who hold, or are likely to hold, that type of endorsement are qualified to vote in the election of that industry member.
- (3) **New restricted fisheries.** This subclause applies only in respect of the first election of industry members of a MAC. The following persons are not qualified to vote in an election for a position of industry member on a MAC for a new restricted fishery, or the position of industry member representing holders of a purse seine net endorsement on a MAC for the ocean hauling restricted fishery:
  - (a) a person who failed to apply to the Director for an endorsement of the relevant type by 1 March 1997,
  - (b) a person who applied for an endorsement of the relevant type by 1 March 1997 and who is notified by the Director, prior to the date notice of the election is given under clause 238, that the application was unsuccessful and who fails to apply to the Director, in a form approved by the Director, for a review of that decision within 21 days after notice of the election is given under clause 238.

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**235 Qualifications of owners of fishing businesses that operate in restricted fisheries**

- (1) This subclause applies if an individual is issued with a class 5 commercial fishing licence because the person owns (either alone or together with other individuals) a fishing business and, because of that fishing business:
- (a) the individual would be entitled, if he or she held a Class 1, 2 or 3 commercial fishing licence, to an endorsement in a restricted fishery, or
  - (b) the individual would be likely to be entitled to an endorsement in a restricted fishery.

The person who holds the licence is taken, for the purposes of this Part, to hold an endorsement of the type he or she would be entitled to, or would be likely to be entitled to, as determined by the Director. Accordingly, the person is qualified for election to a position of industry member on a MAC representing endorsement holders of that type and to vote in an election for such a MAC.

- (2) Any person who holds an endorsement in a restricted fishery, or who applied to the Director for such an endorsement, and whose entitlement to such an endorsement arises only because he or she is employed in the fishing business of the holder of a Class 1, 2, 3 or 5 commercial fishing licence is not, by reason of holding that endorsement or having applied for that endorsement, qualified for election to a position as industry member on a MAC or to vote in an election for such a MAC.

**Division 3 Procedure for election of industry members of Management Advisory Committees****236 Definitions**

In this Division:

*close of ballot*, in relation to an election, means the time and date for the close of the ballot for the election that have been fixed under this Regulation by notice under clause 238 or, if that close has been extended, the time and date fixed under clause 239.

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*close of nominations*, in relation to an election, means the time and date for the close of nominations for the election that have been fixed under this Regulation by notice under clause 238 or, if that close has been extended, the time and date fixed under clause 239.

*close of roll*, in relation to an election, means the time and date for the close of the roll for the election that have been fixed under this Regulation by notice under clause 238 or, if that close has been extended, the time and date fixed under clause 239.

*election* means an election conducted for the purposes of electing one or more members of a MAC as provided by section 230 (2) (a) of the Act.

*industry member*, of a MAC, means a member of a MAC who is elected and appointed pursuant to clause 230 (2) (a) of the Act.

*MAC* means a Management Advisory Committee.

*returning officer* means:

- (a) the Electoral Commissioner for New South Wales, or
- (b) a person nominated by the Electoral Commissioner for the purpose of exercising the functions of a returning officer.

*roll*, in relation to an election, means the roll prepared for the election by the Director under this Division.

### **237 Notice that election is required**

When an election is required under section 230 (2) (a) of the Act, the Director is:

- (a) to give the returning officer written notice that an election is required, and
- (b) to prepare, certify and deliver to the returning officer a roll containing the full names and addresses of the persons who, in the opinion of the Director, are qualified to vote in the election, to stand as a candidate and to nominate a candidate in the election.

**238 Notification of election**

- (1) The returning officer is to publish written notice of an election as soon as practicable after having been notified in writing by the Director that the election is required.
- (2) The notice is to be published in at least one newspaper that circulates throughout New South Wales and in such other local newspaper (if any) as the returning officer considers appropriate.
- (3) The notice of the election must:
  - (a) fix a time and date for the close of nominations, and
  - (b) fix a time and date for the close of the roll, and
  - (c) state that if the election is contested a ballot will be held, and fix a time and date for the close of the ballot.

The notice may contain such other information concerning the election as the returning officer considers appropriate.

- (4) The close of nominations and the close of the roll must be not earlier than 21 days, and not later than 28 days, after the date on which the notice is published.

The returning officer must also forward to each person included in the roll a notice setting out the matters set out in the notice of election and including such other information as the returning officer considers appropriate.

**239 Postponement of closing dates**

- (1) The returning officer may postpone (for a period not exceeding 14 days) the close of nominations, the close of the roll or the close of the ballot by written notice in a form similar to, and published in the same manner as, the notice referred to in clause 238.
- (2) The returning officer may exercise the power conferred by this clause more than once in respect of an election.

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#### **240 Nomination of candidates**

- (1) A person is qualified to nominate a candidate for an election if, and only if, the person is entitled to vote in the election.
- (2) A person is not entitled to nominate more than the number of candidates that are required to be elected to represent the person.
- (3) A nomination of a candidate:
  - (a) must be in a form approved by the returning officer, and
  - (b) must be made by no fewer than 2 persons (other than the candidate) who are qualified to nominate a candidate, and
  - (c) must be lodged with the returning officer before the close of nominations.
- (4) If the returning officer is of the opinion that an insufficient number of the persons by whom a candidate has been nominated are qualified to nominate a candidate, the returning officer must, as soon as practicable, cause notice of that fact to be given to the candidate.

#### **241 Withdrawal of nomination**

A candidate may withdraw his or her nomination by notice in writing addressed to the returning officer at any time before the close of nominations.

#### **242 Exhibition of roll**

- (1) The Director is to cause copies of the roll to be exhibited for public inspection at offices of NSW Fisheries for a period of at least 14 days ending at the close of the roll.
- (2) The Director may cause the copies of the roll to be exhibited at such other places the Director considers appropriate.

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**243 Application for enrolment by person not already enrolled**

- (1) A person may apply to the Director, in a form approved by the Director, for inclusion in the roll.
- (2) The application must be lodged on or before the close of the roll.
- (3) On receipt of the application the Director must:
  - (a) if satisfied that the applicant is qualified to vote in the election, accept the application and enter the name and address of the applicant in the roll, or
  - (b) if not so satisfied, reject the application and inform the applicant in writing that the application has been rejected.
- (4) The Director may, before the close of the roll, make any other necessary correction of the roll.
- (5) A determination by the Director as to whether or not a person is likely to be a shareholder or commercial fisher in a fishery is final and conclusive.

**244 Uncontested election—share management fishery**

- (1) In the case of an election for industry members of a MAC for a share management fishery, if by the close of nominations no more than the minimum number of candidates have been duly nominated for election, the returning officer is to declare all those candidates duly elected.
- (2) If there are more than the minimum number of candidates, a ballot must be held.
- (3) In this clause, a reference to the minimum number of candidates is a reference to the number of industry members on a MAC, as specified in column 2 of Part A of the Table next to the fishery concerned.

#### **245 Uncontested elections—restricted fisheries**

- (1) In the case of an election for industry members of a MAC for a restricted fishery, if by the close of nominations the number of candidates duly nominated for election to represent commercial fishers holding a particular type of endorsement in the fishery does not exceed the number required to be elected to represent those fishers (as specified in relation to the fishery concerned in column 3 of Part 3 of the Table), the returning officer is to declare those candidates duly elected.
- (2) If the number of candidates in the election exceeds the number required to be elected, a ballot must be held.

#### **246 Updating of roll**

- (1) As soon as practicable after it becomes apparent to the returning officer that a ballot must be held, the returning officer is to notify the Director of that fact.
- (2) Within 7 days after having been so notified by the returning officer, the Director is to certify and deliver to the returning officer a copy of the roll, as in force at the close of the roll, together with an appropriately addressed label or an appropriately addressed envelope for each person whose name is included in that roll.
- (3) This clause does not apply to an election which is held as a consequence of an earlier election which has failed but in respect of which the relevant roll has been furnished to the returning officer under this clause.

#### **247 Printing of ballot-papers**

- (1) The returning officer must, as soon as practicable after the close of nominations in an election:
  - (a) determine the order in which the candidates' names are to be listed on a ballot-paper by means of a ballot held in accordance with the procedure prescribed for the purposes of section 82A of the *Parliamentary Electorates and Elections Act 1912*, and

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- (b) cause sufficient ballot-papers to be printed so that a ballot-paper may be forwarded to each person included in each of the rolls.
- (2) A ballot-paper for an election must contain:
- (a) the names of the candidates arranged in the order determined in accordance with subclause (1) (a), with a small square set opposite each name, and
  - (b) if, in the opinion of the returning officer, the names of 2 or more of the candidates are so similar as to cause confusion, such other matter as will, in the opinion of the returning officer, distinguish between those candidates, and
  - (c) such directions as to the manner in which a vote is to be recorded, and the ballot-paper returned to the returning officer, as the returning officer considers appropriate.

#### **248 Distribution of ballot-papers**

The returning officer must, as soon as practicable after the printing of the ballot-papers for an election, forward to each person included in the roll for the election:

- (a) a ballot-paper initialled by the returning officer or by a person authorised by the returning officer in that behalf, and
- (b) an unsealed reply-paid envelope addressed to the returning officer and bearing on the back the words “Name and address of voter” and “Signature of voter”, together with appropriate spaces for the insertion of the person’s name, address and signature.

#### **249 Duplicate ballot-papers**

- (1) At any time before the close of the ballot, the returning officer may supply a duplicate ballot-paper to any voter to whom a ballot-paper was forwarded if the voter satisfies the returning officer by statutory declaration that the ballot-paper has been spoilt, lost or destroyed, and that the voter has not already voted in the election to which the ballot-paper relates.

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- (2) The returning officer is to maintain a record of all duplicate ballot-papers supplied under this clause.

### 250 Recording of votes

In order to vote in an election, an elector must:

- (a) complete the ballot-paper in accordance with the directions printed on it, and
- (b) place the completed ballot-paper (folded so that the vote cannot be seen) in the envelope addressed to the returning officer and forwarded with the ballot-paper, and
- (c) seal the envelope, and
- (d) insert his or her full name and address on the back of the envelope and sign the back of the envelope, and
- (e) return the envelope to the returning officer so that it is received by the returning officer before the close of the ballot.

### 251 Receipt of ballot-papers

- (1) In any ballot, the returning officer must reject any envelope purporting to contain a ballot-paper, being an envelope:
  - (a) that is not received by the returning officer before the close of the ballot, or
  - (b) that is unsealed,without opening the envelope or inspecting the ballot-paper.
- (2) On receipt, before the close of the ballot, of an envelope purporting to contain a ballot-paper, the returning officer must examine the name on the back of the envelope and:
  - (a) if the returning officer is satisfied that a person of that name is included in the relevant roll for the election, accept the ballot-paper in the envelope for scrutiny without opening the envelope and draw a line through that person's name in the roll, or

- (b) if the returning officer is not so satisfied, or if a signature does not appear on the back of the envelope, reject the ballot-paper in the envelope without opening the envelope.
- (3) If it appears to the returning officer that the signature on the back of any such envelope is not the signature of the person whose name and address appear on the back of the envelope, the returning officer may make such inquiries as the returning officer thinks fit. If the returning officer is satisfied after making those inquiries that the signature is not the signature of that person, the returning officer is to reject the ballot-paper in the envelope without opening the envelope.

#### **252 Ascertaining result of ballot**

The result of a ballot is to be ascertained by the returning officer as soon as practicable after the close of the ballot.

#### **253 Scrutineers**

Each candidate in a ballot is entitled to appoint, by notice in writing to the returning officer, a scrutineer to represent the candidate at all stages of the scrutiny.

#### **254 Scrutiny of votes**

- (1) At the scrutiny of votes in a ballot, a ballot-paper must be rejected as informal if:
  - (a) it is neither initialled by the returning officer (or by a person authorised by the returning officer in that behalf) nor bears a mark prescribed as an official mark for the purposes of section 122A (3) of the *Parliamentary Electorates and Elections Act 1912*, or
  - (b) it has on it any mark or writing which, in the opinion of the returning officer, could enable any person to identify the voter who completed it, or
  - (c) it has not been completed in accordance with the directions shown on it.

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- (2) A ballot-paper must not be rejected as informal merely because:
  - (a) there is any mark or writing on it that is not authorised or required by this Division (not being a mark or writing referred to in subclause (1) (b)) if, in the opinion of the returning officer, the voter's intention is clearly indicated on the ballot-paper, or
  - (b) ~~the~~ number of candidates the voter has recorded a vote for is less than the number to be elected.
- (3) The scrutiny of votes in a ballot is to be conducted as follows:
  - (a) the returning officer must produce unopened the envelopes containing the ballot-papers accepted for scrutiny under clause 251 in respect of the ballot, other than any envelope purporting to contain a ballot-paper rejected under clause 251 (3),
  - (b) the returning officer must then open each such envelope, extract the ballot-paper and (without unfolding it) place it in a locked ballot-box,
  - (c) when the ballot-papers from all the envelopes so opened have been placed in the ballot-box, the returning officer must then unlock the ballot-box and remove the ballot-papers,
  - (d) the returning officer must then examine each ballot-paper and reject those that are informal,
  - (e) the returning officer must then proceed to count the votes and ascertain the result of the election in accordance with clause 255.

#### 255 Counting of votes

- (1) In any election the method of counting votes is to be the "first past the post" method, that is, the candidate or candidates with the most votes is or are taken to be elected.

- (2) If the number of candidates to be elected cannot be determined because of an equality of votes, the candidate taken to be elected is the candidate whose name is drawn from a lot containing the names of each of the candidates having equal votes.

#### **256 Notification of result of election**

- (1) As soon as practicable after a candidate has been elected, the returning officer must notify the Director, in writing, of the name of the candidate or candidates so elected.
- (2) The Director is to publish written notice of the appointment of elected industry members in the Gazette.

#### **257 Decisions of returning officer final**

If the returning officer is permitted or required by the Act or this Division to make a decision on any matter relating to the conduct of a ballot in an election, the decision of the returning officer on that matter is final.

#### **258 Offence**

Any person who:

- (a) votes, or attempts to vote, more than once in any election, or
- (b) votes, or attempts to vote, in an election in which the person is not entitled to vote, or
- (c) makes a false or wilfully misleading statement (not being a statement verified by statutory declaration):
- (i) to the returning officer in connection with an election, or
  - (ii) in any document that the person furnishes for the purposes of an election,

is guilty of an offence.

Maximum penalty: 5 penalty units.

**259 Death of a candidate**

Where a candidate dies after the close of nominations and before the close of the ballot for an election:

- (a) the returning officer must cause a notification of the death to be published in the Gazette, and
- (b) all proceedings in the election taken after the Director notified the returning officer that the election was required to be held are to be of no effect and those proceedings must be taken again.

**Division 4 Provisions relating to members and procedure of Management Advisory Committees**

**260 Definitions**

In this Division:

*industry member* means a member of a MAC elected and appointed pursuant to section 230 (2) (a) of the Act.

*MAC* means a Management Advisory Committee.

*member* means a member of a MAC.

*non-elected member* means a member of a MAC appointed pursuant to section 230 (2) (b) of the Act.

*returning officer* means the returning officer for an election (within the meaning of Division 2 of this Part).

**261 Non-elected members**

- (1) For the purposes of section 230 (2) (b) of the Act, non-elected members are to be appointed from among the following interested groups:
  - (a) NSW Fisheries,
  - (b) groups representing recreational fishers,
  - (c) the Nature Conservation Council,
  - (d) groups representing indigenous Australians,
  - (e) such other groups as the Minister considers appropriate.

- (2) The number of non-elected members appointed to a MAC is to be less than the number of industry members of the MAC.
- (3) At least one of the non-elected members appointed to each MAC is to be a person selected from a panel of nominees of the Nature Conservation Council.

### **262 Deputies of members**

- (1) A member may, from time to time, appoint a person to be the deputy of the member, and may at any time revoke any appointment.
- (2) Such an appointment may only be made with the approval of the Director. The Director may revoke such approval at any time.
- (3) In the absence of a member, the member's deputy:
  - (a) may, if available, act in the place of the member, and
  - (b) while so acting, has all the functions of the member and is to be taken to be the member.
- (4) A person, while acting in the place of a member, is entitled to be paid such allowances as the Minister may from time to time determine in respect of the person.

### **263 Terms of office**

Subject to this Division:

- (a) an industry member holds office for a term of 3 years but is eligible (if otherwise qualified) for re-election and re-appointment, and
- (b) a non-elected member holds office for the term specified in his or her appointment (not exceeding 3 years) but is eligible (if otherwise qualified) for re-appointment.

## 1997 No 170

Fisheries Management (General) Amendment (Management Advisory Committees) Regulation 1997

### Schedule 1 Amendments

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#### **264 Continuation of membership of MAC**

- (1) Some of the first industry members elected to a MAC are to hold office for a term of 18 months (rather than 3 years). The Director is to determine the number of industry members on each MAC who will hold office for an 18 month term and is to notify the returning officer of that number.
- (2) As soon as practicable after the returning officer has determined the results of the first election of members of a MAC for a fishery, the returning officer is to determine, by lot, the names of the industry members who are to hold office for an 18 month term.
- (3) The determination by lot is to be made as follows:
  - (a) the names of each of the industry members elected to a position on a MAC are to be written on separate and similar slips of paper,
  - (b) each slip is to be folded so as to prevent identification of the name on it,
  - (c) the slips are to be mixed and one is to be drawn at random,
  - (d) the name on the slip drawn is the name determined by lot.

#### **265 Allowances for members**

A member is entitled to be paid such allowances as the Minister from time to time determines in respect of the member.

#### **266 Vacancy in office of a member**

- (1) The office of a member becomes vacant if the member:
  - (a) dies, or
  - (b) completes a term of office and is not re-elected or re-appointed, or

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- (c) resigns the office by instrument in writing addressed to the Director, or
  - (d) is removed from office by the Director under this clause, or
  - (e) is absent from 3 consecutive meetings of the MAC of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Director or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Director for having been absent from those meetings, or
  - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (g) becomes a mentally incapacitated person.
- (2) The Director may remove a non-elected member from office at any time.
- (3) The Director may remove an industry member from office if the member:
- (a) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable, or
  - (b) is convicted of an offence under the Act, this Regulation or any other regulation made under the Act or an offence relating to theft of fish, fishing gear or a boat or intentional damage to fishing gear or a boat, or
  - (c) ceases to be qualified to be elected to the MAC (see Division 2 of this Part).

## **1997 No 170**

Fisheries Management (General) Amendment (Management Advisory Committees) Regulation 1997

Schedule 1 Amendments

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### **267 Filling of vacancy in office of member**

- (1) If the office of an industry member becomes vacant because the term of office of the member has ended, an election is to be held in accordance with Division 3 of this Part for the purpose of appointing a new member.
- (2) If a vacancy occurs in the office of an industry member otherwise than because the term of office of the member has ended, the Director may appoint a person to fill the office for the remainder of that term, being a person who would be qualified to be elected to the office and who the Director decides, after consultation with the relevant industry sector, is appropriate for that office.

### **267A General procedure for calling and holding meetings of a MAC**

- (1) The procedure for the calling and holding of meetings of a MAC is to be determined by the Director or the Director's nominee.
- (2) The Director is to call at least 2 meetings of a MAC each calendar year, unless otherwise determined by the MAC.

### **267B Quorum**

The quorum for a meeting of a MAC consists of the majority of its industry members for the time being.

### **267C Voting**

A decision supported by a majority of votes cast at a meeting of a MAC at which a quorum is present is the decision of the MAC, but only if the majority of members present are industry members.