

# Legal Practice (Board Elections) Regulations 1997

S.R. No. 74/1997

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STATUTORY RULES 1997

S.R. No. 74/1997

*Legal Practice Act 1996*

**Legal Practice (Board Elections) Regulations 1997**

The Governor in Council makes the following Regulations:

Dated: 22 July 1997

Responsible Minister:

JAN WADE  
Attorney-General

SHARNE BRYAN  
Clerk of the Executive Council

**1. Objective**

The objective of these Regulations is to prescribe matters relating to the conduct of elections of practitioner members to the Legal Practice Board.

**2. Authorising provisions**

These Regulations are made under sections 371 and 445 of the **Legal Practice Act 1996**.

**3. Definitions**

In these Regulations—

**"Act"** means **Legal Practice Act 1996**;

**"ballot material"** means the material sent to a person under regulation 18(2);

**"candidate's indication of preferences"** means an indication of preferences prepared by a candidate under regulation 17;

- "candidate's personal statement"** means a personal statement prepared by a candidate under regulation 12;
- "close of roll day"** has the meaning given in regulation 10(2)(b);
- "close of voting"** means 5.00 p.m. on the last day of voting;
- "combined roll"** means the roll kept under section 364(1)(c) of the Act;
- "declaration envelope"** has the meaning given in regulation 18(2)(f);
- "electoral rolls"** means the roll of advocates, the roll of non-advocates and the combined roll;
- "Form"** means form in the Schedule;
- "last day of voting"** means the day fixed by the returning officer under regulation 8 or as altered by the returning officer under regulation 9;
- "nomination day"** has the meaning given in regulation 10(2)(d);
- "polling official"** means a returning officer, deputy returning officer or person appointed as a polling official under regulation 5;
- "roll of advocates"** means the roll kept under section 364(1)(a) of the Act;
- "roll of non-advocates"** means the roll kept under section 364(1)(b) of the Act;
- "return envelope"** has the meaning given in regulation 18(2)(g);
- "working day"** means a day that is not a Saturday, Sunday or public holiday within the meaning of the **Public Holidays Act 1993**.
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**4. *Returning officer***

From time to time the Board may appoint a returning officer to conduct elections of practitioner members to the Board.

**5. *Deputy returning officer and polling officials***

- (1) The returning officer may appoint a deputy returning officer to assist the returning officer or to act in their absence and may appoint polling officials to assist in the conduct of elections.
- (2) An appointment under sub-regulation (1) must be in writing and signed by the returning officer.
- (3) A deputy returning officer may exercise any power or perform any function of a returning officer under these Regulations, other than the power of appointment under sub-regulation (1).

**6. *Returning officer not to be a candidate***

The returning officer and deputy returning officer must not be candidates in the election.

**7. *Electoral rolls***

- (1) An electoral roll must include the following information—
    - (a) the year of the roll;
    - (b) the number of current practitioners on the roll;
    - (c) the surname and christian or given names of each current practitioner on the roll;
    - (d) the address to which ballot material is to be sent to each current practitioner on the roll.
  - (2) Only a current practitioner who is enrolled by 5 p.m. on the close of roll day for an election is entitled to vote at that election.
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**8. Last day of voting**

- (1) For the purpose of an election, the returning officer must fix a day in accordance with this regulation by which postal votes in that election must be received by the returning officer.
- (2) The last day of voting—
  - (a) must be a working day; and
  - (b) must be at least 6 weeks after the day on which notice of the election is published in the Government Gazette under regulation 10(1).

**9. Change to last day of voting**

- (1) If special circumstances exist, the returning officer may alter the last day of voting and fix a different later day by notice published in the Government Gazette.
  - (2) If ballot material has not yet been issued, the notice must indicate the week in which it is likely to be issued.
  - (3) No later than 7 days after the publication of the notice in the Government Gazette, the returning officer must cause a copy of the notice to be published in a daily newspaper circulating throughout Victoria.
  - (4) For the purposes of sub-regulation (1), a special circumstance includes—
    - (a) an unforeseen delay in printing ballot material or in the processing of candidates' personal statements or indications of preferences; or
    - (b) a postal strike or any disruption to the postal service—
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that would, in the opinion of the returning officer, necessitate altering the last day of voting.

**10. Notice of election**

- (1) The Board must cause a notice of each election to be published in the Government Gazette.
- (2) The notice must specify—
  - (a) the vacancy for which the election is to be held; and
  - (b) the day by which a current practitioner wishing to vote must have applied for enrolment ("**close of roll day**"); and
  - (c) the address at which a current practitioner may apply for enrolment; and
  - (d) the day by which nominations of candidates for the election must be received by the returning officer ("**nomination day**"); and
  - (e) the name of the returning officer; and
  - (f) the address at which the returning officer will receive nominations; and
  - (g) the last day of voting.
- (3) The nomination day must be a working day that is at least 14 days after the day the notice of election is published in the Government Gazette.
- (4) The close of roll day must be a working day that is at least 7 days before the nomination day.
- (5) No later than 7 days after the publication of the notice of election in the Government Gazette, the Board must cause a copy of the notice to be published in a daily newspaper circulating throughout Victoria.

**11. Nominations**

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- (1) A person wishing to be a candidate in an election<sup>1</sup> must deliver or cause to be delivered to the returning officer a nomination in Form 1 before 12 noon on the nomination day.
- (2) A nomination must be signed by the candidate and by 2 other current practitioners entitled to vote at the election.
- (3) The Board must confirm that the person nominated is entitled to be a candidate and that the nominators are entitled to vote in the election.
- (4) If requested, the returning officer must issue a receipt for a nomination.

#### **12. *Candidate's personal statement***

- (1) A candidate may lodge with the returning officer a personal statement for inclusion in the ballot material.
  - (2) A personal statement—
    - (a) must be no longer than 250 words; and
    - (b) must not refer to another candidate standing in the election without that person's written consent; and
    - (c) may be accompanied by a recent photograph of passport-photograph size for distribution with the statement; and
    - (d) must be lodged before 12 noon on the nomination day.
  - (3) A consent under sub-regulation (2)(b) must be lodged with the personal statement.
  - (4) A candidate who provides a photograph under sub-regulation (2)(c) must write their name on the back of the photograph.
  - (5) The returning officer may—
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- (a) liaise with any candidate with respect to the form and content of a personal statement;
  - (b) amend a personal statement in accordance with the written authorisation of the candidate.
- (6) The returning officer must keep a record of any amendments made under sub-regulation (5)(b).
- (7) A candidate who lodges a personal statement is responsible for the accuracy and integrity of all statements contained in it.

**13. *No nominations***

If no valid nominations are received in an election—

- (a) the returning officer must notify the Board immediately after the close of nominations; and
- (b) the Board must cause a notice to be published in the Government Gazette within 7 days—
  - (i) stating that no nominations were received in the election; and
  - (ii) giving further notice of election in accordance with regulation 10.

**14. *Uncontested elections***

If only one candidate is validly nominated in an election, the returning officer must—

- (a) publish a notice in the Government Gazette declaring that candidate elected; and
- (b) forward a copy of the notice to the Board.

**15. *Contested elections***

If more than one candidate is validly nominated in an election, the returning officer must—

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- (a) announce the full name of each candidate on the nomination day; and
- (b) publish a notice of each nomination in the Government Gazette within 7 days after the nomination day.

**16. Preparation and form of ballot-papers**

- (1) In the event of a contested election, the returning officer must hold a ballot immediately after the close of nominations to determine the order of candidates on the ballot-paper.
- (2) Candidates may be present at this ballot.
- (3) A ballot-paper—
  - (a) must be in Form 2; and
  - (b) must show the names of the candidates in the order determined under sub-regulation (1); and
  - (c) must not contain a candidate's title, qualifications or reference to any political or other affiliation or allegiance.

**17. Candidate's indication of preferences**

- (1) A candidate may lodge with the returning officer an indication of preferences containing the candidate's preferred order of voting.
  - (2) A candidate's indication of preferences—
    - (a) must be in the form of a ballot-paper; and
    - (b) must be lodged in person by the candidate, or a person authorised by the candidate, no later than 3 days after the nomination day.
  - (3) In an indication of preferences a candidate must—
    - (a) identify each candidate in the form and order in which they appear on the ballot-paper; and
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- (b) place once only the figures 1, 2, 3, 4 (and so on as the case requires) in the squares opposite the names of the candidates so as to indicate the candidate's preference for them.

**18. Dispatch of polling material**

- (1) No later than 7 days after the nomination day, the Board must supply the returning officer with the electoral roll for the election.
- (2) At least 14 days before the last day of voting the returning officer must post or deliver to each person on the electoral roll for the election—
- (a) a ballot-paper signed or initialled by a polling official; and
  - (b) any candidate's personal statement lodged in accordance with regulation 12, printed substantially in the same type, format and spacing as that used by the candidate; and
  - (c) any photograph lodged with a candidate's personal statement in accordance with regulation 12; and
  - (d) any candidate's indication of preferences lodged in accordance with regulation 17; and
  - (e) if a candidate has not lodged a personal statement or indication of preferences that complies with these Regulations, a statement to that effect; and
  - (f) an envelope for the ballot-paper, indicating a place for the voter to sign and date it ("**declaration envelope**"); and
  - (g) a prepaid envelope bearing the returning officer's address ("**return envelope**").
- (3) It is not necessary for a candidate's personal statement to be printed substantially in the same
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type, format and spacing as that used by the candidate if it is not practicable to do so.

- (4) An election is not invalidated only because ballot material has been forwarded to a person who is not entitled to vote.

### **19. *Marking a vote***

- (1) Subject to this regulation, a voter must mark their vote by placing once only the figures 1, 2, 3, 4 (and so on as the case requires) in the squares opposite the names of the candidates so as to indicate the voter's preference for them.
- (2) If there are only 2 candidates at an election, a voter may mark the ballot-paper with a figure 1 so as to indicate the voter's first preference only.
- (3) If there are more than 2 candidates, a voter may mark the ballot-paper with the figures 1, 2, 3 (and so on as the case requires) opposite the names of all candidates except one.
- (4) In the circumstances set out in sub-regulation (3), the voter is to be taken to have given their last preference vote to the candidate opposite whose name no figure is marked.

### **20. *Return of ballot-papers***

- (1) A voter must—
    - (a) insert the marked ballot-paper in the declaration envelope and seal that envelope; and
    - (b) sign and date the declaration envelope; and
    - (c) place the declaration envelope in the prepaid return envelope.
  - (2) The voter must post or deliver the return envelope to the returning officer at the address on the envelope, or at another address notified to the
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voter by the returning officer, so as to reach the returning officer by the close of voting.

**21. *Issue of replacement ballot-papers***

The returning officer may issue a replacement ballot-paper to a voter if the voter gives the returning officer a declaration to the effect that—

- (a) the voter has not received a ballot-paper or the ballot-paper has been lost, spoilt or destroyed; and
- (b) the voter has not already voted in the election.

**22. *Withdrawal or death of candidate***

- (1) A candidate for an election may withdraw their consent to the nomination by lodging a notice of retirement with the returning officer at any time before the commencement of the scrutiny of votes in the election.
- (2) If a candidate withdraws or dies after the close of nominations but before the commencement of the scrutiny of votes in an election, their first preference votes are to be distributed amongst the other eligible candidates next in order of the voters' preference and are deemed to be first preference votes for those candidates.

**23. *Place where votes are to be counted***

The returning officer must designate the place where the votes are to be counted and must advise each candidate of that place.

**24. *Scrutineers***

- (1) A candidate may appoint one or more scrutineers to scrutinise the electoral activities set out in sub-regulation (2), but only one scrutineer for a candidate may be present at an electoral activity at any one time.

- (2) The electoral activities referred to in sub-regulation (1) are—
  - (a) the opening and emptying of the ballot box or other container in which the declaration envelopes are kept;
  - (b) the processing of declaration envelopes;
  - (c) the counting and recounting of ballot-papers.
- (3) An appointment of a scrutineer must be in Form 3.
- (4) The returning officer may have a scrutineer removed if—
  - (a) more than one scrutineer for a candidate is present at an electoral activity at the one time; or
  - (b) the scrutineer touches a ballot-paper or otherwise interferes with or obstructs an electoral activity; or
  - (c) the scrutineer fails to obey a lawful instruction from a polling official.
- (5) A person cannot be appointed as a scrutineer in an election if they are—
  - (a) an officer or employee of the Board; or
  - (b) a candidate in the election; or
  - (c) a candidate in any other election being held simultaneously with the election.

### **25. *Scrutiny of votes***

As soon as practicable after the close of voting, the returning officer, with the assistance of any polling officials, must—

- (a) produce unopened all declaration envelopes received by the close of voting; and
  - (b) examine each envelope and, if it is signed and dated, accept it for further scrutiny; and
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- (c) if it is not signed or dated, reject the envelope without opening it; and
  - (d) place all unrejected envelopes on a table so that the signatures of the voters are not visible; and
  - (e) open each unrejected envelope, withdraw the ballot-paper from it and deposit the ballot-paper in the ballot box; and
  - (f) when all ballot-papers have been deposited in the ballot box, withdraw them and count the votes in accordance with the Act<sup>2</sup> and these Regulations.

**26. *Adjournment of scrutiny***

The returning officer may from time to time adjourn the scrutiny of votes to a day and time fixed by the returning officer and notified to the scrutineers.

**27. *Notification and publication of results***

- (1) The returning officer must notify each candidate of the result of the election within 7 days after the day on which the scrutiny of votes in the election is completed.
- (2) Not less than 7 days after all candidates have been notified in accordance with sub-regulation (1), the returning officer must declare the result of the election by notice published in the Government Gazette.
- (3) The returning officer must send a copy of the notice published in the Government Gazette to the Board.

**28. *Recounts***

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At any time before notice of an election result is published in the Government Gazette, the returning officer may (and must, if requested in writing by a candidate) conduct a recount of the votes in the election.

**29. *Disposal of ballot-papers***

At the end of the period of 60 days after notice of an election result is published in the Government Gazette, the returning officer must destroy all ballot-papers, declaration envelopes and return envelopes used in the election.

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**SCHEDULE**

**FORM 1**

Regulation 11(1)

**NOMINATION FORM**

**Legal Practice Board**

**Advocate/Non-advocate/Combined Roll<sup>(1)</sup>**

Legal Practice (Board Elections) Regulations 1997, regulation 11(1)

**CANDIDATE**

Name

Postal address for correspondence

Date of admission

Form in which given names are to appear on ballot-paper<sup>(2)</sup>

To the returning officer: We, the current practitioners named below, being enrolled on the roll of advocates/roll of non-advocates/combined roll<sup>(1)</sup>, nominate the current practitioner of not less than 7 years' standing referred to above as a candidate for election to the Legal Practice Board.

**NOMINATORS**

Name

Postal address for correspondence

Signature

Date

Name

Postal address for correspondence

Signature

Date

**Candidate's declaration of consent:**

I consent to be nominated as a candidate for election to the Legal Practice Board as a practitioner member to represent electors on the advocates'/non-advocates'/combined roll<sup>(1)</sup>.

I declare that I am qualified to be a candidate under the provisions of the **Legal Practice Act 1996<sup>(3)</sup>**.

Signature of candidate

Date

(1) Delete whichever is not appropriate

(2) You may use an initial or initials or common abbreviation or alternative for your given names

(3) A candidate should ensure that he or she is qualified to be a candidate.

**FORM 2**

Regulation 16(3)(a)

BALLOT-PAPER

Polling Official's  
initials

**Legal Practice Board**  
**[Advocate/Non-advocate/Combined] Roll**

Number the boxes from 1 to [*insert number of candidates*] in the order of your choice.

You should number EVERY box.  
You must NOT use any number more than once.

[Candidate name]

[Candidate name]

[Candidate name]

Candidate name]

[Candidate name]

[Candidate name]

Dimensions of ballot-paper: 105 mm x 210 mm.

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**FORM 3**

Regulation 24(3)

**APPOINTMENT AND DECLARATION  
OF SCRUTINEER**

**Legal Practice Board**

**Advocate/Non-advocate/Combined Roll<sup>(1)</sup>**

Legal Practice (Board Elections) Regulations 1997, regulation 24(3)

**Candidate**

Name  
Address

**Scrutineer**

Name  
Address

**Appointment**

I, a candidate for election as a practitioner member of the Legal Practice Board at the election to be held on [*insert date*], appoint the person named above to be my scrutineer.

Candidate's signature

Date

**Scrutineer's declaration:**

I, the scrutineer named above, undertake to be a scrutineer for the candidate named above and declare that I am an eligible person to be appointed as a scrutineer<sup>(2)</sup>.

Scrutineer's signature

Date

in the presence of

Name and signature of witness

Date

- (1) *Delete whichever is not appropriate*  
(2) *Regulation 24(5) of the Legal Practice (Board Elections) Regulations 1997 provides that a person cannot be appointed as a scrutineer in an election if they are—*  
(a) *an officer or employee of the Legal Practice Board; or*  
(b) *a candidate in the election; or*  
(c) *a candidate in any other election being held simultaneously with the election.*

**NOTES**

<sup>1</sup> To be eligible to be a candidate, a person must be—

- (a) a legal practitioner of at least 7 years' standing (s. 351(2) of the Act); and
- (b) a current practitioner enrolled on the relevant electoral roll (s. 366(4) of the Act).

There are also restrictions on candidates from the same RPA (see s. 366(5) of the Act).

<sup>2</sup> Sections 367 and 368 of the Act set out the general procedure for counting votes in an election.