

# Guideline

## FOR THE CONDUCT OF BOARD ELECTIONS

### 1. PURPOSE

This Guideline assists Clubs in conducting fair and open elections for Boards of Directors. The Guideline must be read in conjunction with the Club's Constitution.

### 2. CLUB CONSTITUTIONS AND BY-LAWS

Elections are to be conducted according to the Club's Constitution and any By-laws passed by the Board. If the Club's Constitution or By-laws do not provide clear rules for conducting elections then they should be updated and amended to do so.

### 3. RETURNING OFFICER

The role of a returning officer is to conduct, in its entirety, the election for the Board of Directors. Broadly speaking, this role includes:

- a) preparing the notice inviting nominations;
- b) ensuring the notice is published;
- c) receiving nominations;
- d) acceptance of nominations and declaring formal acceptance when nominations close;
- e) conducting the draw for positions on the ballot paper;
- f) drafting and printing ballot papers;
- g) distributing ballot papers to eligible members;

- h) counting ballot papers; and
- i) providing the result to the Club.

A returning officer should not be a candidate for any position being contested in an election. A returning officer cannot be seen to have any affiliation with or show support to any candidate or group of candidates. The integrity of an election relies on the ability and complete impartiality of the returning officer. The returning officer may or may not be a member of the Club but should not be an employee of the Club<sup>1</sup>.

### 4. POWERS OF THE RETURNING OFFICER

In conducting elections, the power and role of the returning officer includes:

- a) The returning officer fulfils a critical function in ensuring a fair and transparent election process for all candidates in accordance with the Club's Constitution and By-Laws.
- b) The decisions of the returning officer should be accepted by the Board and management of the Club unless there is some clearly stated reason to the contrary.
- c) The returning officer should be consulted on any discrepancy or concern raised about the election process.
- d) If the returning officer raises a concern about the manner or conduct of the election or candidates then these concerns should be addressed by the Club.

### 5. ELECTION TIMETABLE

Subject to the Club's Constitution and By-laws for Club elections:

- a) there should be a period of at least two weeks but generally not more than four weeks between the date nominations are invited and the close of nominations;
- b) the close of roll of members entitled to vote should be no later than the time set for the close of nominations;
- c) there should be a period of at least two weeks between the close of nominations and the commencement of the voting period for the AGM if voting is at the AGM;
- d) the days and times for voting should be convenient to members and should ensure that as far as practicable, members are given adequate opportunity to vote;
- e) where ballot papers are posted to members, there should be a period of about 21 days between posting to members and return of ballot papers; and
- f) if the Club's Constitution does not permit the above guidelines to be given effect, the Club should consider reviewing its Constitution.

### 6. NOTICE OF ELECTION BY RETURNING OFFICER

Subject to the requirements of the Club's Constitution, an election notice should be:

- a) prominently displayed on the Club noticeboards;
- b) posted to all members; and
- c) advertised in a newspaper.

The notice should:

- d) state that an election is to be held and identify and provide contact details for the returning officer;
- e) set the time and date for the close of the roll of eligible members;
- f) invite nominations, listing the positions to be contested;

- g) clearly set out any requirements or qualifications required under the Constitution to be eligible to contest any position;
- h) advise where nomination forms may be obtained;
- i) specify the place where nominations are to be lodged;
- j) fix the time and date for the close of nominations; and
- k) advise the day(s) and time(s) for voting; or if a postal ballot, when ballot papers will be posted and when and where they are to be returned; or if voting is at the AGM, the time, date and location of the meeting.

### 7. NOMINATIONS

#### PRE-NOMINATION

Clubs should make available to all candidates the Director's pre-nomination information kit that can be obtained from ClubsNSW.

#### GENERAL

A nomination form should require completion of the following information:

- a) the full name, residential address, contact details (home or business phone/fax/email/mobile phone number) and membership number of the candidate;
- b) the position or positions for which the candidate is standing;
- c) the candidate's written consent to the nomination;
- d) the full names, residential address, membership number and signatures of the required number of eligible nominators; and
- e) the place and time by which to lodge nominations.

If the returning officer is of the opinion that there is an anomaly in a nomination, such that it may require the returning officer to reject the nomination, the returning officer should, as soon as practicable after receiving the nomination, contact

the candidate and advise that the anomaly should be rectified before the time for close of nominations.

Unless there are exceptional circumstances the returning officer cannot accept a nomination after the time and date fixed for the close of nominations.

#### **WITHDRAWAL OF A NOMINATION**

A candidate who has been nominated in an election should be permitted to withdraw that nomination, but only in writing addressed to the returning officer, provided it is received by the returning officer before the close of nominations.

#### **CERTIFICATION OF A NOMINATION**

For the purpose of enabling the returning officer to form an opinion as to the eligibility of a candidate and the candidate's nominators/proposers, the returning officer should require the CEO of the Club to furnish him/her with such information regarding the candidate and nominators/proposers as the returning officer may specify. The CEO of the Club should provide the required information, in writing, as soon as practicable after the request is made and certainly before nominations close.

### **8. UNCONTESTED ELECTIONS**

If, when nominations close, the number of persons who have been duly nominated as candidates for a particular position does not exceed the number to be elected to a position, each of those persons is elected. Any positions remaining unfilled should be filled according to the Club's Constitution.

### **9. CONTESTED ELECTIONS**

If, by the close of nominations, the number of persons who have been nominated as candidates for a position or positions exceeds the number of persons to be elected, then a ballot must be held for the position(s).

### **CANDIDATE PROFILES**

The following applies if candidates are permitted to provide information (profiles) about themselves, which would be made available to members:

- a) Profiles should be submitted to the returning officer, in an approved format, at any time before the close of nominations;
- b) The returning officer should compile and present the profiles in a manner agreed with the Club prior to the commencement of the election;
- c) If it is considered that any information provided by a candidate is not appropriate; is false or misleading; or exceeds a stipulated word limit, the returning officer may, take action to omit or rectify the information, or reduce the length of the information, as the case requires;
- d) Where voting is conducted at the Club, the profiles should be displayed throughout the voting period, and for a postal ballot, posted with the ballot paper. Alternatively, they could be included in the Club's journal or annual report; and
- e) The profiles should be displayed in the same order as the candidates on the ballot paper. Where photographs are included, all photographs should be the same size and ideally, current Directors should not be shown wearing Director's apparel.

### **10. DELIVERY OF ROLL OF ELIGIBLE VOTERS TO THE RETURNING OFFICER**

As soon as practicable after the close of nominations, the returning officer should receive a roll of eligible voting members certified to that effect by the CEO.

The roll should show, in alphabetical order and consecutively numbered, the full surname, given names, residential address and membership number of each member entitled to vote. If the election is to be conducted by post, corresponding address details supplied as labels or on disk (or other means as agreed between the Club and the

returning officer) should be supplied to the returning officer at the same time.

Candidates are entitled to a copy of the roll in order to pursue their candidature.

### 11. ORDER OF CANDIDATES ON BALLOT-PAPERS

A returning officer should not conduct a draw for positions on the ballot paper without at least one independent witness present. Ideally, candidates or their representatives should be present. The time and place for the conduct of the draw should have been adequately advertised.

Where a Club's Constitution contains any particular requirements as to the manner or order candidates are to appear on the ballot paper, the returning officer must comply with those requirements.

Otherwise, the returning officer, as soon as possible after the close of nominations, should conduct a ballot to determine the order of candidates on the ballot-paper. Where there are separate positions, a separate draw is conducted for each position.

Such a ballot could be conducted in the following manner, which is consistent with Parliamentary elections:

- a) on identical slips of paper show each candidate's name as it will appear on the ballot paper;
- b) enclose the slips in separate, identical containers, seal each container and deposit all the containers in a ballot-box and fasten the ballot box;
- c) rotate the ballot-box and allow any other person present to do the same;
- d) unfasten the ballot-box and take out a container. Announce and record the name of the candidate whose name is on the slip taken from the first container. Repeat the process until all containers have been withdrawn and all names recorded; and

- e) sign the record and ask someone else to sign as well.

All candidates should be formally advised of the result of the draw.

### 12. FORM OF BALLOT-PAPERS

Separate ballot papers can be prepared for each position, or several positions can be included on a single ballot paper. The returning officer should make this decision in consultation with the CEO. Where there are multiple positions on one ballot paper (e.g. President, Vice President, Treasurer, Committee) each position should be shown separately and in order of seniority.

The returning officer is responsible for printing the ballot-papers. This could be done "in house" or by a commercial printer, however, security is paramount. A certificate should be issued and signed by the returning officer, acknowledging the exact number of ballot papers printed. They should be securely stored at all times.

The ballot papers are:

- a) to show the position(s) being contested;
- b) to show the names of the candidates contesting each position (in the order prescribed by the ballot or some other way if so prescribed by the Club's Constitution);
- c) to distinguish names from each other where a similarity in the names of two or more candidates is likely to cause confusion;
- d) to give the candidates preferred use of name where possible. For example, candidate may prefer Bill for William or Jim for James but nicknames are not acceptable;
- e) to provide clear and concise direction as to the manner in which the vote is to be recorded, having regard to the system of voting required by the Constitution; and
- f) where the ballot is conducted by post to provide instructions on how the ballot paper is to be returned to the returning officer and the date for the close of the ballot.

### 13. **ADVICE TO MEMBERS AND CANDIDATES**

The returning officer should ensure that a list of the candidates and the office for which they have nominated, along with other information such as the days and hours of voting, availability of postal voting, name and contact phone number of the returning officer are displayed on the Club's noticeboards. This information may also appear in the Club's journal.

The returning officer should write to all candidates following the close of nominations providing them with a copy of the ballot paper draw, the arrangements for voting, the method of voting, information regarding the appointment of scrutineers, the day and time of counting the votes and any other information as the returning officer determines.

### 14. **VOTING**

Voting options are as follows (note: in accordance with Section 30(1)(d) of the *Registered Clubs Act 1976* there is no proxy voting).

#### **ATTENDANCE VOTING AT THE CLUB**

Voting takes place at the Club during the days and times as advertised. A member wishing to vote should produce his/her membership card and have his/her name marked off the roll.

The member should record acceptance of his/her ballot paper by listing their membership number and signature on an attendance sheet. This then becomes a daily and continuing record of ballot papers issued.

If the Club's membership card does not contain photo identification the member should be asked to produce another form of photo identification. If photo identification is not available then another form/s of identification should be produced to satisfy the returning officer/polling official of the identity of the person.

The returning officer/polling official should initial the ballot paper before handing it to the member who, having voted, should place the completed ballot-paper in a locked ballot box. Ballot papers should not be numbered as this compromises the confidentiality of the vote.

If a member makes a mistake when voting, a replacement ballot paper can be given in exchange for the spoilt one. Members should not be allowed to take their ballot paper from the voting area and then return to cast their vote as this may cause the validity of the ballot paper to be in jeopardy.

Candidates should not assist persons as to how to complete their ballot papers. Members who require assistance should obtain assistance from the returning officer or polling official.

At some Clubs voting may take place at more than one location. As members may attend both premises, there arises the opportunity for a person to vote at both locations. While procedural checks would identify any instance of this after the ballot had closed, it would be too late to guarantee the integrity and correctness of the result.

Some possible alternatives are:

- a) amend the hours of voting so that voting is not concurrent at two locations. This would allow a single roll to be used. Sufficient time would have to be allowed to open voting at the 2<sup>nd</sup> location, using the same roll; and
- b) require members to place their ballot papers in an envelope, and complete a declaration on the envelope before placing it in the ballot box. It would then be possible to isolate and reject any envelopes should someone have voted more than once.

This situation should of course, be addressed and resolved prior to the start of the election process and candidates advised of procedures.

### POSTAL VOTING

The returning officer should, as soon as practical after the printing of the ballot papers, send by post to each person included on the roll:

- a) a ballot paper (or papers) initialled by the returning officer, containing the directions for voting and for return of the ballot paper;
- b) an envelope addressed to the returning officer with spaces on the back for the member to print their name and address, and a space for the member's signature. If considered necessary, the member's membership number may also be required. (An inner "ballot paper only" envelope may also be provided if considered necessary); and
- c) if applicable, candidate profiles.

The envelope containing the completed ballot paper is to be received by the returning officer prior to the close of the ballot. It can be posted or delivered.

On receipt of an envelope, the returning officer must, if satisfied that a person of that name is included on the roll for the election, accept the ballot paper in the envelope without opening the envelope and make a mark on the roll to indicate that the person has voted.

If the returning officer is not satisfied that a person of that name is included on the roll, or if the person's name and signature does not appear on the envelope, it should be rejected and the envelope not opened.

Envelopes received by the returning officer after the date for the close of the ballot should be rejected and remain unopened.

### COMBINATION OF ATTENDANCE VOTING AND POSTAL VOTING

The same procedures outlined above for attendance voting are to be followed. However, where a member is unable to attend the Club during the

hours of voting he/she may apply in writing to the returning officer for a postal ballot paper.

The returning officer should mark the roll to identify that a postal vote has been issued to the member. The same procedures for postal voting as outlined above are followed.

### VOTING AT THE AGM

Some members (and employees) may be entitled to attend the AGM and vote on general matters, but are not entitled to vote in the election of the Board of Directors.

The CEO, when preparing a list of members entitled to attend the AGM should prepare a separate roll of members entitled to vote in the election of the Board of Directors.

The returning officer should initial the ballot paper before handing it to the member who, having voted, should place the completed ballot paper in the locked ballot box.

### CLUBS WITH MULTIPLE PREMISES

Members of Clubs with multiple premises (including amalgamated Clubs), regardless of their location, must be given a reasonable opportunity to participate in the election process at the premises they usually patronise. If it is impracticable for this to occur because of the small number of persons participating in voting at a particular set of premises then a postal vote should be offered.

## 15. INCENTIVES TO VOTE

Incentives to vote before or during an election period are not desirable. For example, free drinks or free or discounted meal vouchers. It is, however, customary to provide some reasonable free refreshments and/or food after the conclusion of an Annual General Meeting.

**16. SECURITY OF THE BALLOT**

The returning officer must at all times ensure the security of the returned postal vote envelopes and the ballot papers completed at an attendance ballot. The unused ballot papers should be securely stored by the returning officer, preferably in a separate ballot box.

**17. 'HOW TO VOTE' MATERIAL**

While candidates are normally entitled to post out 'how to vote' material to members in order to pursue their candidature, the distribution of "how to vote" material on Club premises is subject to any restrictions specified in the Club's Constitution/By-laws. Generally it is recommended that Clubs do not allow the distribution of "how to vote" material on Club premises.

Enforcement of any restrictions on the distribution of "how to vote" material on the Club's premises should be the responsibility of Club management.

Clubs should also ensure that neither incumbent Board members nor other particular candidates in Board elections are given any special treatment or promotion in Club publications or on the Club premises over other candidates. Examples include particular candidates being promoted in a President's message in the Annual Report or promotional material being authorised by the Board for particular candidates on the Club's premises.

How to vote material should not contain any defamatory statements and should clearly state on the material who authorised the material.

**18. SCRUTINY AND COUNTING**

At the close of the ballot (postal ballot) the returning officer is to open each envelope which has been determined as acceptable, extract the ballot paper (without unfolding it) and place it in a ballot box. In an attendance ballot, the ballot papers should remain in the locked ballot box up to the close of

the ballot. The returning officer will then remove the ballot papers from the ballot box, examine each ballot paper for formality and conduct the count.

The ballot is to be counted in order of seniority. Any candidate elected to a higher position will be excluded from subsequent ballots.

In the event that two or more candidates have an equal number of votes and one has to be excluded or one has to be elected, unless the Constitution/By-laws provide a means of resolution of a tie other than by "a draw from a hat" the returning officer will conduct a draw.

**19. INFORMAL BALLOT PAPERS**

A ballot paper is generally considered to be informal if it:

- a) has not been completed in accordance with the directions on it; or
- b) has not been initialled by the returning officer or the polling official; or
- c) contains a mark or writing which, in the returning officer's opinion, would enable the elector to be identified, for example, roll number, name.

Before starting the count, the returning officer should be perfectly clear on the criteria for informality and should ensure that scrutineers observing the count on behalf of candidates have a clear understanding. The returning officer's decision on the formality/informality of a ballot paper should be regarded as final.

**20. PERSONS PRESENT AT SCRUTINY AND COUNT**

The returning officer, polling officials, and scrutineers appointed on behalf of candidates are entitled to be present during the scrutiny of envelopes, issuing of ballot papers, and the counting of the ballot papers.

A scrutineer is a person appointed by the candidate to observe the process on his/her behalf. A scrutineer is therefore not entitled to assist the returning officer in the counting of ballot papers.

A candidate may not act as a scrutineer in any of the ballots being contested. Subject to the requirements of the Club's Constitution a scrutineer need not be a member of the Club. The Club solicitor or auditor for example could act as a scrutineer.

### 21. RESULT OF ELECTION

Once the result of the election has been determined, the returning officer should advise the CEO of the Club of the result in writing, including:

- a) (in the case of a postal ballot) the number of envelopes rejected and the reason for the rejection;
- b) the number of votes received by each candidate;
- c) the number of informal votes; and
- d) the total number of votes cast.

Once the result has been announced, a copy of the result should be placed on the Club noticeboard.

### 22. RETENTION OF MATERIALS

All materials (roll of electors, ballot papers, etc) are to be kept by the returning officer for one month prior to being destroyed. This is in case there is any challenge by a candidate concerning the result of the election. After the election result is declared at the Annual General Meeting a resolution should be sought from the members to destroy the ballot papers after one month.

### (Endnotes)

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- 1 It is expected that new regulations will apply to Club elections and the appointment of returning officer.

Clubs with more than 10,000 members will be required to have the election of the Club's governing body conducted by a person or body approved by the Director of Liquor and Gaming. Clubs with 10,000 members or less have the option of using an external person/body to conduct their elections. It is recommended however that they also use an external person/body.

Pursuant to Section 30(1)(a2) of the *Registered Clubs Act 1976*, the Director of Liquor and Gaming approves the following persons/bodies to conduct elections for Clubs with more than 10,000 members:

- a) Employee or a person authorised or approved by the Australian Electoral Commission to be a returning officer;
- b) Secretary, or Top Executive of a Club within 50km of the Club and with more than 10,000 members;
- c) Solicitor not currently acting for the Club; or
- d) Accountant not currently acting for the Club.

At the time of writing, these requirements were not in force.