

No. R. 918

27 June 2003

REGULATIONS REGARDING THE ELECTION AND APPOINTMENT OF MEMBERS OF A PROFESSIONAL BOARD

The Minister of Social Development has, in terms of section 28(1)(gD)(viii) of the Social Services Professions Act, 1978 (Act No 110 of 1978) and on the recommendation of the South African Council for Social Service Professions, made the regulations in the Schedule hereto.

*SCHEDULE***DEFINITIONS**

1. In this Schedule "the Act" means the Social Service Professions Act, 1978 (Act 110 of 1978), and any expression to which a meaning has been assigned in the Act shall bear such meaning and, unless inconsistent with the content –

"*agent*" means any person designated in writing by a candidate to represent him or her at an event referred to in regulation 18 or 19;

"*ballot paper*" means the ballot paper referred to in regulation 17;

"*candidate*" means any person nominated in terms of regulation 11;

"*community*" means all South African citizens;

"*council*" means the South African Council for Social Service Professions (SACSSP) established in terms of section 2(1) of the Act;

"*cover envelope*" means the cover envelope referred to in regulation 17(3);

"*election*" means the election of the members of the professional board concerned;

"*identification envelope*" means the identification envelope referred to in regulation 16;

"*member*" means a member of the professional board concerned;

"*member of the profession concerned*" means a member of the profession for which the professional board is to be established;

"*Minister*" means the Minister of Social Development;

"*nomination form*" means the nomination form referred to in regulation 10;

"*nomination time*" means the date and hour specified in regulation 10;

"*polling day*" means the day on which the period specified in the notice published in terms of regulation 15 expires;

"*polling officer*" means a polling officer appointed in terms of regulation 21(1);

"*professional board*" means a professional board established in terms of section 14A of the Act;

"register" means the register referred to in section 19;

"registered address" means the address appearing in the register of the council on the date of despatch of a ballot paper;

"registration number" means a registration number contained in the register referred to in section 19;

"returning officer" means the officer referred to in regulation 8;

"section" means a section of the Act;

"serial number" means the number referred to in regulation 16(2);

"the number of members to be elected" means the number of members referred to in the relative notice published in terms of regulation 9(2); and

"voter" means any person who is entitled to vote at an election in terms of regulations 5, 6 and 7.

QUALIFICATIONS FOR PERSONS TO BE ELECTED OR APPOINTED AS MEMBERS OF A PROFESSIONAL BOARD

2. A person who is elected or appointed as a member of a professional board in terms of section 28(gD)(viii) of the Act shall –

- (a) be a South African citizen who is resident in the Republic; and
- (b) not be a person prohibited from continuing in office as a member in terms of regulation 24(a).

TERM OF OFFICE

3. (1) The members of a professional board shall hold office for a period of five years, subject to sub regulation 2 and regulation 24(2).

(2) In order for the term of office of the professional boards to run concurrently with the term of office of the council, the members of the professional boards constituted during the term of office of the present council, shall hold office until the date three months prior to the date of expiring of the term of office of the members of the new council, after which an election of the professional boards will take place and members would be appointed anew by the Minister.

4. (1) Members may, at the expiry of their terms of office, be eligible for re-election and reappointment.

(2) Members serving on the present council may be elected and appointed as members of a professional board.

QUALIFICATIONS OF VOTERS

5. Subject to regulations 6 and 7, every person registered with the Council in terms of sections 17, 18 and 18A of the Act, as the case may be, to practise the profession for which a professional board is to be established, shall be entitled to record one vote at the election for every member of the profession registered in terms of the same section and practising the same profession on the same level as the voter concerned.

6. In the case of the election of members of a professional board for a profession for which the registrar of the council does not yet keep a register in terms of section 19 -

(1) a numbered list of voters containing the names and postal addresses of members of the profession concerned, shall be provided to the council by the representative body or group of persons that applied to the council to establish the professional board concerned, on a date which shall not be later than 20 days after the date of publication of the notice in the Gazette in terms of regulation 9(1)(a).

(2) only the persons whose particulars are on the list referred to in subregulation (1) shall be entitled to, during this first election of the professional board, bring out one vote for each member of the professional board on the same level as he or she is practising as described in the list of voters.

7. Notwithstanding the provisions of regulation 5 and 6, no person shall be entitled to vote at the election if, on the day on which he or she votes, he or she is not a South African citizen.

RETURNING OFFICER

8. The registrar or the person deputising for him or her shall be the returning officer for elections held in terms of these regulations.

SUBMISSION OF NOMINATIONS

9. (1) Nominations for candidates shall be requested as follows:

(a) The returning officer shall, for the purposes of any nomination required for members of the profession to be elected, through a written request and by notice in the *Gazette*, invite such nominations from prescribed institutions and all members of the profession concerned, not more than 120 days and not less than 90 days prior to the election.

(b) The Minister shall, for the purpose of any nominations of persons to be appointed by him or her from the community, through the media and by notice in the *Gazette*, invite such nominations.

(2) Nomination of candidates for the election of the number of members to be elected, may be submitted to the returning officer up to the date and hour specified in Annexure A, which date shall not be later than 30 days after the date of publication of such notice.

10. Each candidate shall be nominated on the nomination form as set out in Annexure A or B, as the case may be, and nominations shall reach -

(a) in the case of members to be elected, the returning officer not later than the hour and date indicated in annexure A; and

(b) in the case of the members to be appointed by the Minister, not later than the date indicated by the Minister in Annexure B.

NOMINATION OF CANDIDATES

11. (1) No person shall be accepted as a candidate for election unless –

(a) he or she is nominated in writing in the form of Annexure A as such a candidate before the expiry of the nomination time;

(b) he or she is nominated by a person whose name appears on a register kept by the council for the profession concerned: Provided that in the case of a professional board for which the council has not yet instituted a register, the nominations be made by a person whose name is on the list of voters provided in terms of regulation 6;

(c) he or she accepts such nomination in writing, in the form of Annexure A, before the expiry date of the nomination time specified on the nomination form; and

(d) he or she deposits with the returning officer an amount of R50 before the expiry of the nomination time.

(2) The amount referred to in paragraph (d) above shall be refunded to a candidate –

(a) if he or she is elected in terms of these regulations; or

(b) if he or she receives a number of votes greater than or equal to at least one third of the total number of votes received by the elected candidate.

12. A nomination in terms of regulation 11 shall be invalid –

(a) unless it contains all the particulars as required in Annexure A; and

(b) if a voter signs the nomination form of more candidates than the total number of members to be elected.

13. (1) If the number of persons accepted as candidates is equal to or less than the number of members to be elected, the returning officer shall forthwith declare the candidates who were so accepted to be duly elected members and shall cause a notice to that effect to be published in the Gazette.

(2) (a) If the number of duly elected members referred to in subregulation (1) is less than the number of members to be elected, the returning officer shall, within 14 days of the publication of the notice referred to in subregulation (1), publish a notice referred to in regulation 9(1) with regard to the election of the members still to be elected.

(b) The provisions of these regulations shall apply in the same manner to the nomination and election of such members.

14. (1) If, on or before the polling day, a candidate dies or notifies the returning officer in writing of the withdrawal of his or her candidature, and the remaining number of candidates is equal to or less than the number of members to be elected, the election shall be stopped immediately and the returning officer shall forthwith declare the said candidates to be duly elected members and shall cause a notice as contemplated in regulation 13 to be published.

(2) If, on or before the polling day, a candidate dies or notifies the returning officer in writing of the withdrawal of his or her candidature, and the remaining number of candidates

exceeds the number of members to be elected, the elections shall notwithstanding be proceeded with: Provided that any votes which have been or are recorded in his or her favour will be ignored in the determination of the result of the election.

NOTICE OF ELECTION

15. If the number of candidates is more than the number of members to be elected, the returning officer shall, within 14 days of the nomination time, cause a notice to be published in the manner specified in regulation 9, to the effect that during the period of 30 days immediately preceding the polling day an election of the number of members to be elected shall be held from amongst the said candidates and that such election shall take place by secret ballot, which shall be provided by the returning officer.

ISSUING OF BALLOT PAPERS

16. (1) If an election by ballot becomes necessary, the returning officer shall send by post to the registered postal address of each voter not less than 30 days before the polling day, a ballot paper, unmarked envelope, identification envelope in the form of Annexure C and cover envelope together with directions concerning the procedure to be followed by the voter in order to vote and the procedure to be followed for the return of the said documents.

(2) The returning officer shall allocate a serial number to each ballot paper despatched in terms of subregulation (1) and shall record the date of despatch thereof.

(3) Where a letter or identification envelope so despatched is lost or destroyed or spoilt, the returning officer shall, if on the strength of an affidavit he or she is satisfied of such loss or destruction or spoilage, despatch or deliver to the voter to whom the original documents were despatched, at his or her request, a new ballot paper or identification envelope or both.

BALLOT PAPERS

17. (1) A voter shall cast his or her vote by personally making an X mark in the square appearing on the ballot paper opposite the name of the candidate for whom he or she wants to vote.

(2) A ballot paper referred to in subregulation (1) shall be in the form of Annexure D.

(3) A voter shall -

(a) place his or her ballot paper in the unmarked envelope and seal it;

(b) place the unmarked envelope in the identification envelope and seal it;

(c) complete and sign the declaration on the identification envelope in the presence of two witnesses, who shall certify his or her signature; and

(d) place the identification envelope in a cover envelope addressed to the returning officer and post or otherwise convey it to him or her.

(4) On the counterfoil of the ballot paper referred to in subregulation (2) only the serial number of the ballot paper concerned shall be specified.

EXAMINATION AND SAFE-KEEPING OF PAPERS RECEIVED BY THE RETURNING OFFICER

18. The returning officer shall place each identification envelope received by him or her unopened in a ballot box previously sealed by him or her in the presence of a candidate, agent or polling officer while it was empty, and shall keep such ballot box in safe custody up to and on the polling day so that no person other than himself or herself shall have access to it.

DETERMINATION OF RESULT OF ELECTION

19. (1) The returning officer shall, as soon as possible after polling day, but not later than the first working day thereafter, in the presence of the candidates, agents and polling officers who are then present, commence to determine the result of the election and shall –

(a) examine the identification envelopes to determine whether the declarations were completed in accordance with the provisions of regulation 17(3);

(b) open such identification envelopes as in his or her opinion meet the requirements of regulation 17(3) and place the unmarked envelopes in a ballot box sealed in the manner referred to in regulation 18;

(c) open the unmarked envelopes and remove the ballot papers; and

(c) examine the ballot papers and determine the validity of each such ballot paper.

(2) The returning officer shall reject a ballot paper in each instance where the voter –

(a) has not returned such ballot paper in the identification envelope;

(b) has neglected to complete the declaration on the identification envelope in every particular in accordance with the provisions of regulation 17(3);

(c) has not marked his or her ballot paper, or his or her ballot paper is invalid, owing to any uncertainty;

(d) has voted for more candidates than the number of members to be elected;

(e) has cast more than one vote per candidate or has returned more than one ballot paper; or

(f) has voted for a person who was not a candidate;

and no votes cast on such ballot paper shall be taken into account at the counting of the votes recorded at the election.

(3) No vote cast on a ballot paper which is not received by the returning officer before the hour on the polling day determined by him or her shall be taken into account at the counting of the votes recorded at the election.

(4) Notwithstanding the provisions of subregulation (2), no ballot paper or vote shall be rejected solely on account of the fact that a vote thereon or such vote has been recorded otherwise than by means of the X mark referred to in subregulation 17(1), unless the returning officer is of the opinion that a vote for a particular candidate has been changed to a vote for another candidate.

(5) No vote on a ballot paper which has been rejected in terms of these regulations and no vote which has thus been rejected shall be counted at the determination of the result of the election.

(6) The returning officer shall endorse on every ballot paper which he or she rejects as invalid that it has been so rejected, and he or she shall, opposite every vote which he or she rejects, endorse the name of the candidate for whom such vote was cast.

(7) If an objection against the rejection of a ballot paper or vote has been registered, the returning officer shall endorse on the ballot paper that such objection has been registered.

(8) If any objection is raised by or on behalf of a candidate against the acceptance of a ballot paper or vote, the returning officer shall endorse on the ballot paper concerned that an objection has thus been registered.

(9) As soon as the returning officer has ascertained the validity or otherwise of all the ballot papers and of all the votes recorded thereby in terms of these regulations, he or she shall determine the number of votes cast for each candidate and which are not rejected in terms of these regulations, and he or she shall, subject to the provisions of subregulation (10) and the number of members to be elected per profession and/or per category, in descending numerical sequence per profession and/or per category, declare those candidates who drew the largest numbers of such votes to be duly elected members of the professional board.

(10) If two or more candidates have received an equal number of votes and as a result it is not possible in terms of subregulation (9) to declare as many candidates as there are members to be elected to the professional board, the returning officer shall declare the candidates in respect of whom such a declaration is possible to be duly elected members of the professional board with effect from the date contemplated in subregulation (13), and the returning officer shall immediately in the presence of the candidates, the agents (if present) and the polling officers determine by drawing lots which of the candidates, who received an equal number of votes shall be declared elected.

(11) The returning officer shall, as soon as possible cause the result of the election, including the number of votes recorded for each candidate, to be published in the Gazette.

(12) As soon as possible after the election of the members referred to in subsection (1), the Minister shall inform the registrar of the names and particulars of the persons who have been appointed by him or her.

(13) The registrar shall, within 30 days of the constitution of the professional board, make known by notice in the *Gazette* the names of the members of the professional board and the dates of their election or their appointment by the Minister as the case may be.

GENERAL PROVISIONS

20. (1) The returning officer shall, immediately after the result of the election has been determined in terms of these regulations –

(a) seal in a separate parcel all the ballot papers which he or she has rejected in terms of these regulations, together with a list of any votes which he or she has so rejected mentioning the number of ballot papers concerned and, if it was possible to ascertain them, the names of the candidates affected by such rejection, and mark the parcel with the expression “rejected ballot papers”;

(b) seal in a separate parcel the counterfoils of all ballot papers which have been issued by him or her and mark the parcel with the expression “counterfoils”;

(c) seal in a separate parcel all other papers relating to the election including the nomination of candidates, and mark the parcel "election papers".

(2) The returning officer shall forthwith deliver the parcels referred to in subregulation (1) to the registrar, who shall keep such parcels unopened for a period of at least one year, unless he or she is otherwise directed by a competent court.

21. (1) The returning officer may at any time appoint such polling officers as he or she may deem necessary to assist him or her in the performance of his or her functions in terms of these regulations.

(2) The said polling officers shall carry out their functions under the supervision and by direction of the returning officer.

(3) No candidate or any person in the service of or under the control of a candidate shall be appointed as a polling officer.

22. The returning officer and every polling officer, candidate or agent who is entitled to be present at the examination of papers or the determination of the result of the election in terms of regulation 19 shall, before he or she assumes the office of returning officer or before he or she may be so present as polling officer, candidate or agent, make a declaration on oath or affirmation in the form of Annexure E.

23. Except in so far as is otherwise provided by or in terms of these regulations, the returning officer shall perform his or her duties in terms of these regulations during the hours between 08:00 and 12:30 and 14:00 and 16:00 on every day of the week that is not a Saturday, a Sunday or a public holiday referred to in section 1 of the Public Holidays Act, 1994 (Act 36 of 1994).

VACATION OF OFFICE AND FILLING OF VACANCIES

24. (1) A member of a professional board shall vacate his or her office if -

(a) the member's estate is sequestrated or he or she has entered into a composition with the creditors of his or her estate;

(b) the member has been absent from more than two consecutive ordinary meetings of the professional board without the professional board's leave;

(c) the member is disqualified under any law from practising his or her profession;

(d) the member ceases to be a South African citizen or to be permanently resident in the Republic;

(e) the member is convicted of an offence, whether in the Republic or elsewhere, in respect whereof he or she is sentenced to imprisonment without the option of a fine;

(f) the member becomes a patient or a State patient as defined in section 1 of the Mental Health Care Act, 2002 (Act No 17 of 2002);

(g) the member -

- (i) in the case of an elected member who ceases to hold a qualification required for his or her election or who ceases to represent the category voters who elected him or her to the professional board, or submits his or her resignation in writing to the registrar; or
- (ii) in the case where a member appointed by the Minister ceases to hold a qualification required for his or her appointment or who ceases to represent the sector from which he or she was appointed as a member of the professional board, or submits his or her resignation in writing to the Minister; or
- (h) the Minister terminates his or her membership for reasons which are just and fair.

(2) Every vacancy on the professional board shall be filled in the same manner in which the member who vacates office was elected or appointed, as the case may be, and every member so elected or appointed shall hold the office for the unexpired portion of the period for which the member whose office became vacant was elected or appointed.

COMMENCEMENT

25. These regulations shall come into operation on the date of publication thereof.