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Electoral (Proxy Voting) Regulations 2016

SL No 9 of 2016

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Electoral (Proxy Voting) Regulations 2016

SL No 9 of 2016

The Electoral Commission makes the following regulations under the *Electoral Act 2016*

IN ACCORDANCE with Sections 78 and 136(e) of the Electoral Act 2016 the Electoral Commission makes the following regulations:

PART 1 — PRELIMINARY MATTERS

Citation

These Regulations may be cited as the *Electoral (Proxy Voting) Regulations 2016*

Commencement

These Regulations commence on the day after the day on which they are published in the Gazette.

Interpretation

In these Regulations the Electoral Act 2016 is referred to as “the Act”, and a reference to “Returning Officer” includes “Electoral Commissioner”.

PART 2-APPLICATION FOR PROXY VOTING AUTHORISATION AND DETERMINATION OF APPLICATION

4. Application for proxy voting authorisation
1. An voter who is entitled to vote at a particular election but who will not be in Nauru on the polling day for the election may (in line with subsections (1) and (5) of Section 78 of the Act) make an application to the Returning Officer for a proxy voting authorisation after the closing of the Roll specified in Section 52(2) of the Act.
2. The proxy nominated by the voter in the application:

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1. must be entitled to vote; and
2. must be enrolled on the same Roll as the voter; and
3. must not be under a sentence, or subject to be sentenced, for an offence punishable by imprisonment for 3 years or more; and
4. must not be proxy, or have been nominated as proxy, for more than 4 other voters.
- (3) The application must be received by the Returning Officer at least 24 hours before polling commences.
- (4) The application must be in the form of Form 1 in Schedule 1 and must comply with the following:
 - (a) Part A must be signed by the applicant whose signature must be witnessed in line with subregulation (5); and
 - (b) Part B must be signed by the nominated proxy.
- (5) The witness must be 1 of the following:
 1. Returning Officer;
 2. Commissioner for Oaths;
 3. Nauru Permanent Representative to the United Nations (New York);
 4. Nauru Ambassador to Republic of China (Taiwan— Taipei);
 5. Nauru High Commissioner to Fiji (Suva);
 6. Nauru Consul General to Australia (Brisbane);
 7. Nauru Consul General to Thailand (Bangkok);
 8. Nauru Honorary Consul to India (New Delhi);
 9. Nauru Honorary Consul to the United Kingdom (London);
 10. Nauru Honorary Consul to Belgium (Brussels);
 11. Nauru Honorary Consul to Israel (Jerusalem);
 12. a person in a country other than Nauru who is a legal practitioner, notary public, commissioner of oaths or justice of the peace under the law of the country ; or
 13. any other person appointed by the Returning Officer to be a witness.
- (6) If the applicant is not in Nauru when the application is signed:

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1. a paper copy of the application may be signed by the applicant and attested by the witness and then scanned and emailed to the email address provided by the Returning Officer; and
2. the nominated proxy may either sign the paper copy before it is scanned and emailed or add his or her signature to a paper copy of the emailed application; and
3. the application will be taken to have been delivered to the Returning Officer when a copy is received by the Returning Officer bearing the signature or a scanned copy of the signature of the applicant, witness and nominated proxy as set out above.

5) **Determination of application for proxy voting authorisation**

- (1) Subject to subregulations (2) and (3), the Returning Officer must, on application, grant a proxy voting authorisation if:
 1. the application complies with regulation 4 ; and
 2. the Returning Officer is satisfied that:
 1. the applicant is entitled to vote at the election; and
 2. the nominated proxy is eligible to act as proxy for the applicant, that is, the person has satisfied the requirements set out in regulation 4 (2)(a) to (d) above.
- (2) The Returning Officer may refuse to grant a proxy voting authorisation if the Returning Officer is not satisfied of any of the following:
 1. the applicant has exercised free will in deciding to make the application for the authorisation;
 2. the applicant will be outside Nauru on polling day;
 3. the nominated proxy has exercised free will in consenting to be proxy;
 4. the nominated proxy understands the responsibilities of a proxy;
 5. the nominated proxy will vote in accordance with the instructions of the applicant.
- (3) The Returning Officer may refuse to grant a proxy voting authorisation if the Returning Officer has reasonable grounds to believe that the applicant has been induced by another, whether by threats or promises or otherwise, to vote by proxy.
- (4) If the Returning Officer grants a proxy voting authorisation, the Returning Officer must make the authorisation in the form of Form 2 set out in Schedule 1 available for collection by the proxy before polling day or at the polling place on polling day.

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- (5) If the Returning Officer refuses to grant a proxy voting authorisation, the Returning Officer must give the applicant a notice of refusal in the form of Form 3 set out in Schedule 1 by delivering it according to the contact details provided in the application or, if no contact details are provided, by making it available for collection by the applicant.

PART 3-EFFECT OF PROXY VOTING AUTHORISATION

- (6) Voter may not vote in person while proxy voting authorisation in force
1. Except as specified in subregulation (2), a voter for whom a proxy voting authorisation for an election has been granted cannot vote personally.
 2. A voter for whom a proxy voting authorisation has been granted who is in Nauru on polling day may, if the proxy voting authorisation is withdrawn in line with these regulations, vote in person at the election.

PART 4-WITHDRAWAL OF PROXY VOTING AUTHORISATION

- (7) Withdrawal of proxy voting authorisation—application of voter
1. An elector may apply to the Returning Officer for a proxy voting authorisation granted to a proxy of the voter to be withdrawn.
 2. The application must be received by the Returning Officer at least 24 hours before polling commences.
 3. The application must:
 1. be in the form of Form 4 set out in Schedule 1; and
 2. be signed by the voter and attested by a witness designated under regulation 4(5)).
 - 4) If the applicant is not in Nauru when the application is signed, a paper copy of the application may be signed by the voter and attested by the witness and then scanned and emailed to the email address provided by the Returning Officer.
 - 5) If an application is received by the Returning Officer in compliance with this regulation, the Returning Officer must withdraw the proxy voting authorisation to which it relates.
- (8) **Withdrawal of proxy voting authorisation—death or ineligibility to vote**

If a proxy voting authorisation has been granted and the voter or proxy dies or ceases to be eligible to vote at the election, the proxy voting authorisation is withdrawn.

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9) **Withdrawal of proxy voting authorisation—more than 5 proxy voting authorisations granted to proxy**

If more than 5 proxy voting authorisations are purportedly granted in the name of the same proxy for an election, the 5 authorisations granted earliest in time are valid and the remaining authorisations are invalid and deemed to be withdrawn.

PART 5-OBLIGATIONS ATTACHED TO PROXY VOTING AUTHORISATION

10) **Returning Officer's obligations—informing voter of withdrawal of proxy voting authorisation**

The Returning Officer must endeavour to inform a voter if a proxy voting authorisation is withdrawn other than by reason of the death of the voter or is invalid under regulation 9.

11) **Returning Officer's obligations—list of proxies for use on polling day**

1. The Returning Officer must make a list of the names of all proxies and related voters for which proxy voting authorisations have been granted for an election.

2. No entry is to be deleted from the list, but if a proxy voting authorisation for the election is withdrawn, the Returning Officer must strike through the relevant entry on the list and add to the entry a note of the reason for the withdrawal.

1. The Returning Officer must give a copy of the list to the presiding officer at each relevant polling place on polling day before the commencement of polling.

12) **Obligation of proxy to return proxy voting authorisation**

1. If a proxy voting authorisation has been collected from the Returning Officer and the authorisation is subsequently withdrawn, the former proxy must, at the request of the Returning Officer or a presiding officer, return the authorisation to the Returning Officer or presiding officer.

Maximum penalty: \$1000 and imprisonment for 3 months.

2. It is a defence to a charge of an offence against subregulation (1) if the defendant proves that the authorisation has been lost or destroyed.

13) **Obligations of presiding officer at polling place**

1) A presiding officer must not deliver a ballot-paper to a person claiming to vote on behalf of a voter as a proxy unless:

a) the person hands in the relevant proxy voting authorisation; and

3. the person is listed as a proxy of the voter on the list of proxies prepared by the Returning Officer and the relevant entry has not been struck through;

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and

4. the presiding officer asks the person each of the following questions:
 1. "Are you the person whose name appears on the proxy voting authorisation as the (the name of the proxy)?"
 2. "Are you qualified to vote as a proxy on behalf of (the name of the voter) at this election of members for (the name of the constituency or the names of the Districts included in the constituency) ?"
 3. "Have you already voted as a proxy of (the name of the elector)?"; and
 4. the person answers questions (i) and (ii) in the affirmative and (iii) in the negative.
- 2) The presiding officer is not entitled to ask the person any other questions in relation to the person's claim to vote at the election as a proxy.
- 3) The presiding officer must note the fact that ballot-papers have been delivered to a proxy against the relevant entry in the list of proxies prepared by the Returning Officer.
- 4) Once a presiding officer has verified that a voter present at a polling station is an authorised proxy voter and is entitled to a proxy vote , the presiding officer or the designated election official must:
 - a) prior to handing that person a ballot- paper, cross off the name of the authorised proxy voter(s) from the voter list;
 - b) hand the voter one ballot-paper for each proxy vote initialled in accordance with Section 70(1) of the Act;
 - c) immediately have the voter sign next to the name of the authorised proxy voter's name on the voters list to confirm that they have received a ballot- paper for that person.
- 14) **Obligation of the proxy in casting vote on behalf of voter**
 - 1) A proxy must cast his or her vote as proxy for a voter at the same time as he or she casts his or her vote as an elector.
 - 2) The proxy must hand to the presiding officer at the polling place the relevant proxy voting authorisation.
5. The proxy is required to vote as instructed by the voter but failure to do so is not good ground for an electoral dispute.

PART 6-APPLICATION OF ELECTORAL ACT 2016

15) Application of Electoral Act 2016 to proxy voting

- 1) Sections 74, 75 and 76 of the Act apply to a proxy or ballot-paper delivered to a proxy as if the proxy were the voter casting a vote at the election.
- 2) A proxy may attend at a polling place to vote at an election only once and must be dealt with under the Act and these regulations as both a voter and proxy on that occasion.

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- 3) Part 10 of the Act relating to “Corrupt Practices And Electoral Offences”, to the extent that the offences relate to proxy voting , also apply to these Regulations.

PART 7-PROXY VOTING OFFENCES

16) **Inducement of voter to vote by proxy**

A person must not induce, whether by threats or promises or otherwise, a voter to vote by proxy at an election.

Maximum penalty: \$10,000 and imprisonment for 2 years.

17) **False or misleading information in application**

A person commits an offence if:

- a) the person signs an application for proxy authorisation as the applicant , a witness and a nominated proxy; and
- b) the application contains false or misleading information; and
- c) the person:
 - 1. knows the information is false or misleading; or
 - 2. is reckless about whether the information is false or misleading.

Maximum penalty: \$5,000 and imprisonment for 1 year.

18) **False or misleading information by proxy**

A person commits an offence if:

- a) the person provides information that is false or misleading in response to a question put to the person by a presiding officer under these regulations; and
- b) the person:
 - 1. knows that the information is false or misleading; or
 - 2. is reckless about whether the information is false or misleading.

Maximum penalty: \$5,000 and imprisonment for 1 year.

Dated this 1st day of June 2016

JOSEPH CAIN
ELECTORAL COMMISSIONER

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SCHEDULE 1 — FORMS

Form 1—Application For Proxy Voting Authorisation

Part A—Application by voter

Electoral (Proxy Voting) Regulations 2016, regulation 4(4)—to be completed by voter.

To the Returning Officer

I,

[insert full name]

of

[insert current address or District of residence]

being on the roll to vote in the constituency of

[insert name of constituency]

apply for a proxy voting authorisation for the:

[tick one box only]

general election

by-election

to be held on

[insert date of polling day]

I declare that I am unable to vote in person at the election because I will not be in Nauru on polling day.

I nominate

[insert full name]

of

[insert current address or District of residence]

being a person on the roll to vote in the same constituency, to be my proxy for the election.

I acknowledge that my proxy must vote on my behalf according to my instructions on how to vote but that there are no controls to ensure that my instructions will be followed and the failure of the proxy to do so is not grounds for an electoral dispute.

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My contact details are as follows:

[Insert details for preferred form of notification if proxy voting authorisation is refused.]

email address:

fax:

phone:

postal address:

I understand that I will be committing an offence if I know, or am reckless about whether, a statement in this application (including in Part B) is false or misleading and that the maximum penalty is \$5,000 and imprisonment for 1 year .

Signature of applicant:

Date:

Signature of witness:

Full name of witness:

Title of witness:

The witness must be 1 of the following: Returning Officer ; Commissioner for Oaths; Nauru Permanent Representative to the United Nations (New York); Nauru Ambassador to Republic of China (Taiwan—Taipei); Nauru High Commissioner to Fiji (Suva); Nauru Consul General to Australia (Brisbane); Nauru Consul General to Thailand (Bangkok); Nauru Honorary Consul to India (New Delhi); Nauru Honorary Consul to the United Kingdom (London); Nauru Honorary Consul to Belgium (Brussels); Nauru Honorary Consul to Israel (Jerusalem); a person in a country other than Nauru who is a legal practitioner, notary public, commissioner of oaths or justice of the peace under the law of the country; or any other person appointed by the Returning Officer to be a witness.

The witness commits an offence if the witness knows, or is reckless about whether, a statement in the application (including in Part B) is false or misleading.

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Part B—Consent of proxy

Electoral (Proxy Voting) Regulations 2016, regulation 4(4)—to be completed by nominated proxy

I,
[insert full name]

of
[insert current address or District of residence]

being on the roll to vote in the constituency of
[insert name of constituency]

consent to vote as proxy of
[insert name of voter]

at the *[tick one box only]*:

general election

by-election

to be held on
[insert date of polling day]

I acknowledge that I must vote on behalf of the voter in accordance with the voter's instructions on how to vote.

I declare that I have not consented to be proxy of more than 4 other voters.

I declare that I am not under a sentence, or subject to be sentenced, for an offence punishable by imprisonment for 3 years or more.

I understand that I will be committing an offence if I know, or am reckless about whether, a statement in this application (including in Part A) is false or misleading and that the maximum penalty is \$5,000 and imprisonment for 1 year.

Signature of proxy:

Date:

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Form 2—Proxy Voting Authorisation

Electoral (Proxy Voting) Regulations 2016, regulation 5(4)—to be completed by Returning Officer.

.....
[insert full name of proxy]

of
[insert current address or District of residence of proxy]

is authorised to vote on behalf of:

.....
[insert full name of voter]

of
[insert current address or District of residence of voter]

at the *[tick one box only]*:

general election

by-election

to be held on
[insert date of polling day]

This authorisation will be withdrawn if the voter withdraws the nomination of the proxy in accordance with the regulations or the voter or proxy dies or ceases to be entitled to vote at the election.

Signature of Returning Officer

Date:

Time:

You must vote in your capacity as a voter and in your capacity as proxy at the same time. It is an offence not to vote in line with the voter's instructions.

This form must be given to the presiding officer at the polling place where you attend to vote on polling day. If you do not take this form with you, you will not be able to vote as proxy on behalf of the voter.

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Form 3—Notice of refusal to grant proxy voting authorization

Electoral (Proxy Voting) Regulations 2016, regulation 5(5)—to be completed by Returning Officer.

To the voter:

[insert full name]

of

[insert current address or District of residence]

Your application for a proxy voting authorisation for the: *[tick one box only]*

general election

by-election

to be held on

[insert date of polling day]

dated

[insert date on application]

is refused because: *[tick 1 or more boxes]*

I am not satisfied that the applicant is enrolled to vote in a constituency for which the election is to be held.

I am not satisfied that the application has been properly completed and signed by the applicant.

I am not satisfied that the signature of the applicant has been properly attested by a witness of the relevant class.

I am not satisfied that the application has been properly completed and signed by the nominated proxy.

The application was not received by the Returning Officer at least 24 hours before polling commences.

I am not satisfied that the nominated proxy is eligible to be a proxy for the voter because:

the person is not entitled to vote at the election.

the person is not enrolled in the same District as the applicant.

the person is under a sentence, or subject to be sentenced, for an offence punishable by imprisonment for 3 years or more.

the person is authorised to act as proxy for more than 4 other electors.

I am not satisfied that the applicant has exercised free will in deciding to apply to vote by proxy.

I am not satisfied that the applicant will be outside Nauru on polling day.

I am not satisfied that the nominated proxy has exercised free will in consenting to be proxy.

I am not satisfied that the nominated proxy understands the responsibilities of a proxy.

I am not satisfied that the nominated proxy will vote in accordance with the instructions of the applicant.

I have reasonable grounds to believe that the applicant has been induced by another to vote by proxy.

Signature of Returning Officer.....

Date:

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Form 4—Withdrawal of nomination of proxy

Electoral (Proxy Voting) Regulations 2016, regulation 7(3)—to be completed by voter.

To the Returning Officer

I,
[insert full name]

of
[insert current address or District of residence]

being on the roll to vote in the constituency of
[insert name of constituency]

revoke the nomination of:

.....
[insert full name of former proxy]

of
[insert current address or District of residence of former proxy]

to vote as my proxy at the: [tick one box only]

general election

by-election

to be held on
[insert date of polling day]

Signature of applicant:

Date:

Signature of witness:

Full name of witness:

Title of witness:

The witness must be 1 of the following: Returning Office; Commissioner for Oaths; Nauru Permanent Representative to the United Nations (New York); Nauru Ambassador to Republic of China (Taiwan—Taipei); Nauru High Commissioner to Fiji (Suva); Nauru Consul General to Australia (Brisbane); Nauru Consul General to Thailand (Bangkok); Nauru Honorary Consul to India (New Delhi); Nauru Honorary Consul to the United Kingdom (London); Nauru Honorary Consul to Belgium (Brussels); Nauru Honorary Consul to Israel (Jerusalem); a person in a country other than Nauru who is a legal practitioner, notary public, commissioner of oaths or justice of the peace under the law of the country; or a person appointed by the Returning Officer to be a witness.