



Dairy Produce (Dairy Service Levy Poll) Regulations 2006¹

Select Legislative Instrument 2006 No. 261

I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Dairy Produce Act 1986*.

Dated 19 October 2006

P. M. JEFFERY
Governor-General

By His Excellency's Command

PETER McGAURAN
Minister for Agriculture, Fisheries and Forestry

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Regulation 1

Part 1 Preliminary**1 Name of Regulations**

These Regulations are the *Dairy Produce (Dairy Service Levy Poll) Regulations 2006*.

2 Commencement

These Regulations commence on the day after they are registered.

3 Objects

- (1) The object of these Regulations is to set out the requirements for the conduct of polls by the industry services body in relation to the amount of the dairy service levy.
- (2) Each poll conducted will determine the recommendation that the industry services body makes to the Minister in relation to the amount of the dairy service levy payable.

Note 1 Under subsection 9 (1) of the Act, the industry services body must make recommendations to the Minister in relation to the amount of the dairy service levy, by the times prescribed by the regulations.

Note 2 Under subsection 9 (2) of the Act, before making each recommendation, the industry services body must conduct a poll in accordance with the regulations. The recommendation must be in accordance with the results of the poll.

4 Definitions

Act means the *Dairy Produce Act 1986*.

buying agent has the meaning given by section 4 of the Collection Act.

Collection Act means the *Primary Industries Levies and Charges Collection Act 1991*.

cut-off day, for a poll, means the day that the industry services body determines, under regulation 7, to be the cut-off day for the poll.

Disputes Panel, for a poll, means the panel established for the poll by the industry services body under regulation 29.

eligible voter, for a poll, means:

- (a) an entity that the industry services body determines, under regulation 9, to be eligible to vote in the poll; or
- (b) a trustee of the estate of a deceased entity that the industry services body determines, under regulation 9, to be eligible to vote in the poll.

entity means:

- (a) an individual; or
- (b) a corporation (within the meaning of section 57A of the *Corporations Act 2001*); or
- (c) a partnership; or
- (d) a trustee, in relation to a particular trust.

first purchaser has the meaning given by section 4 of the Collection Act.

industry services body, at a particular time, means the body declared by the Minister under section 7 of the Act to be the industry services body at that time.

Note On 1 July 2003, the Minister declared Dairy Australia Limited to be the industry services body.

information memorandum, for a poll, means an information memorandum for the poll, of the kind mentioned in regulation 19.

intermediary means a buying agent, a first purchaser, a manufacturer or a selling agent.

levy year, for a poll, means the financial year ending immediately before the beginning of the poll year.

manufacturer has the meaning given by clause 1 of Schedule 6 to the *Primary Industries (Excise) Levies Act 1999*.

poll means a poll of the kind mentioned in section 9 of the Act.

poll year, for a poll, means the financial year in which the poll is conducted under these Regulations.

Register of eligible voters means the register provided for in regulation 14.

Regulation 4

return day, for a poll, means the day that the industry services body determines, under Division 3.1, to be the return day for the poll.

returning officer, for a poll, means the person appointed under regulation 23 to be the returning officer for the poll.

selling agent has the meaning given by section 4 of the Collection Act.

valid votes means a vote cast in accordance with regulation 21.

voting entitlement, in relation to an eligible voter, is the entitlement for the voter worked out under regulation 11 and recorded on the Register of eligible voters.

voting instructions, for a poll, means voting instructions for the poll, of the kind mentioned in regulation 18.

Part 2 Recommendations to the Minister

5 When recommendations must be made

- (1) This regulation applies for subsection 9 (1) of the Act.
- (2) The first recommendation that the industry services body must make to the Minister in relation to the amount of the dairy service levy must be made by 8 April 2007.
- (3) After making that recommendation, the industry services body must make further recommendations (*further levy recommendations*) to the Minister in relation to the amount of the dairy service levy, in accordance with subregulations (4), (5) and (6).
- (4) Each further levy recommendation must be made not later than a day (*levy recommendation day*) to be determined by the industry services body.
- (5) The industry services body must ensure that each levy recommendation day is not later than:
 - (a) for the first of the further levy recommendations — 8 April 2012; and
 - (b) for any other further levy recommendation — the fifth anniversary of the immediately previous levy recommendation day.
- (6) Before the industry services body determines a levy recommendation day, the industry services body must consult representatives of the entities that will be, or are likely to be, eligible to vote in the poll for the recommendation, about the timing of the recommendation day.

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6 Results of the poll to accompany industry services body's recommendation

The recommendation following a poll, that the industry services body is required to make to the Minister under subsection 9 (1) of the Act, must be accompanied by:

- (a) a summary of the results of the poll; and
- (b) a statement as to how the recommendation is in accordance with the results of the poll.

Part 3 Conduct of polls

Division 3.1 Cut-off and return days

7 Cut-off and return days for polls

- (1) Before conducting a poll, the industry services body must determine, for the poll:
 - (a) a day (the *cut-off day*) by which the industry services body must determine:
 - (i) which entities are eligible to vote in the poll; and
 - (ii) the voting entitlement of each eligible voter; and
 - (b) a day (the *return day*) by which ballot-papers for the poll must be received by the returning officer.
- (2) The industry services body must ensure that the cut-off day for a poll is a day that is:
 - (a) at least 2 calendar months after the end of the levy year for the poll; and
 - (b) at least 3 calendar months before the return day.

Note The copy of the voting instructions to accompany each ballot-paper must state the return day — see regulation 18.

8 Changing return days

- (1) This regulation applies if it becomes apparent that 1 or more eligible voters for a poll will be unable to send their ballot-papers to the returning officer, so that they are received by the return day for the poll because of circumstances that:
 - (a) were not foreseen when the return day was determined under paragraph 7 (1) (b); and
 - (b) are outside the control of the voter or voters.
- (2) The industry services body may determine another day to be the return day for the poll to allow a reasonable amount of time for all eligible voters to send their ballot-papers to the returning officer, so that they are received by the return day.

Regulation 9

- (3) If the industry services body makes a determination under subregulation (2) for a poll, the industry services body must:
- (a) send to every eligible voter that has not, by the day the determination is made, already returned its ballot-paper written notice about the new return day for the poll; or
 - (b) publish at least 1 notice, stating the new return day for the poll:
 - (i) in at least 1 national newspaper that is circulated in all States and Territories; and
 - (ii) in any other publications circulated in rural areas that are of significant interest to producers of dairy produce.

Division 3.2 Eligibility to vote and voting entitlement

9 Determination of eligibility and voting entitlement

- (1) The industry services body must determine, as at the cut-off day for a poll:
- (a) if an entity is eligible to vote in the poll; and
 - (b) the voting entitlement of each eligible entity.
- (2) If, before the cut-off day, an entity dies, the industry services body must determine whether a trustee of the deceased's estate is eligible to vote in the poll.

10 Determining eligibility to vote

- (1) The industry services body must determine that an entity is eligible to vote in the poll, if:
- (a) dairy service levy is payable for the levy year for the poll in relation to dairy produce produced by the entity; and
 - (b) before the cut-off day:
 - (i) the entity paid an amount of dairy service levy to the Commonwealth, for the levy year; or

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- (ii) an intermediary who purchased dairy produce from the entity during the levy year paid an amount of dairy service levy to the Commonwealth, for the levy year, on behalf of the entity, under subsection 7 (1) of the Collection Act.
- (2) The industry services body must determine that a trustee of the estate of an entity who dies before the cut-off day for a poll, is eligible to vote in the poll, if:
 - (a) dairy service levy is payable for the levy year for the poll in relation to dairy produce produced by the entity; and
 - (b) before the cut-off day:
 - (i) the entity, or the estate, paid an amount of dairy service levy to the Commonwealth, for the levy year; or
 - (ii) an intermediary who purchased dairy produce from the entity, or the estate, during the levy year paid an amount of dairy service levy to the Commonwealth, for the levy year, on behalf of the entity, or the estate, under subsection 7 (1) of the Collection Act.

11 Determining voting entitlement

- (1) The industry services body must determine, for the poll, the voting entitlement of each eligible voter in accordance with subregulation (2) or (3).
- (2) If the eligible voter is an entity, the industry services body must allocate to the entity, as at the cut-off day for the poll, 1 vote for:
 - (a) each whole dollar of dairy service levy (if any) that the entity paid to the Commonwealth before the cut-off day, for the levy year; and
 - (b) each whole dollar of dairy service levy that 1 or more intermediaries paid (if any) to the Commonwealth, on the entity's behalf, before the cut-off day, for the levy year.

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- (3) If the eligible voter is a trustee of the estate of an entity, the industry services body must allocate to the trustee 1 vote for:
 - (a) each whole dollar of dairy service levy (if any) that the entity paid to the Commonwealth before the cut-off day, for the levy year; and
 - (b) each whole dollar of dairy service levy (if any) that the estate paid to the Commonwealth before the cut-off day, for the levy year; and
 - (c) each whole dollar of dairy service levy (if any) that 1 or more intermediaries paid to the Commonwealth, on behalf of the entity or the estate, before the cut-off day, for the levy year.

12 Information to be used for making determinations

- (1) The industry services body may use any information available to it to make a determination under regulation 10 or 11, including:
 - (a) information from any register it maintains, including its register of members; and
 - (b) any other information provided to the body under subsection 27 (3A) of the Collection Act; and
 - (c) information provided by any entity, or trustee of the estate of an entity who dies, that claims to be eligible to vote in the poll.
- (2) The industry services body may invite:
 - (a) each entity that might be eligible to vote in the poll to provide information to the body about the amount of dairy service levy (if any) that:
 - (i) the entity paid to the Commonwealth before the cut-off day, for the levy year; or
 - (ii) 1 or more intermediaries paid to the Commonwealth on behalf of the entity, before the cut-off day, for the levy year; and

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- (b) each trustee of the estate of an entity who died before the cut-off day for the poll, that might be eligible to vote in the poll to provide information to the body about the amount of dairy service levy (if any) that:
 - (i) the entity paid to the Commonwealth before the cut-off day, for the levy year; or
 - (ii) the estate paid to the Commonwealth before the cut-off day, for the levy year; or
 - (iii) 1 or more intermediaries paid to the Commonwealth, on behalf of the entity, or the estate, before the cut-off day, for the levy year.
- (3) The industry services body may issue the invitation in any manner that it chooses, including by publishing a notice in 1 or more newspapers.
- (4) If the industry services body issues the invitation:
 - (a) there must be sufficient time between the issuing of the invitation and the cut-off day, to allow a reasonable amount of time for the information to be provided; and
 - (b) the industry services body must take into account any information received before the end of the cut-off day.

13 Notice about voting entitlement

- (1) Within 15 days after the cut-off day for a poll, the industry services body must send to each eligible voter a notice that states:
 - (a) the voter's voting entitlement; and
 - (b) that the voter may apply to the industry services body for reconsideration of its determination of the voter's voting entitlement; and
 - (c) that an application for reconsideration:
 - (i) must be in writing; and
 - (ii) must state the reasons why the applicant seeks reconsideration of the determination; and
 - (iii) must be received by the industry services body within 14 days after the day specified in the notice for the purposes of this subparagraph; and

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(iv) may be accompanied by documents supporting the applicant's application.

- (2) The notice must also state that, if the voter's voting entitlement is reconsidered by the industry services body and the voter remains dissatisfied with the reconsidered decision, the voter may apply to the Disputes Panel for the poll, for review of the reconsidered decision.

Note Part 4 deals with reconsideration of determinations about voting entitlement, and review of decisions made on reconsideration.

14 Register

- (1) The industry services body must maintain an electronic register to be known as the Register of eligible voters.
- (2) The Register must contain:
- (a) the name and address of each eligible voter; and
 - (b) the voting entitlement of each eligible voter.
- (3) The industry services body must ensure that the information set out in subregulation (2) is recorded on the Register within 15 days after the cut-off day for a poll.
- (4) If, at any time, the industry services body becomes aware that the information recorded on the Register is not up to date at that time, the body must update the Register as soon as practicable after that time.
- (5) If, at any time, the industry services body becomes aware that there is an error in the information recorded on the Register, the body must alter the Register to rectify the error as soon as practicable after that time.

Division 3.3 Material to be sent to eligible voters

15 Material to be sent to eligible voters

Not later than 5 weeks before the return day for a poll, but after the cut-off day for the poll, the industry services body must send to each eligible voter the following for the poll:

- (a) a ballot-paper;
- (b) a copy of the voting instructions;
- (c) a copy of the information memorandum;
- (d) a reply-paid envelope, addressed to the returning officer, in which the ballot-paper may be sent to the returning officer.

Note Before the ballot-paper, voting instructions and information memorandum for a poll may be used, the Minister must approve them — see regulation 20.

16 Proposing rates of levy for polls

For subsection 9 (1) of the Act, the industry services body must propose 3 to 5 rates of dairy service levy for a poll, including the rate of zero.

17 Ballot-papers

The ballot-paper, for the poll, sent to each eligible voter must set out:

- (a) the name of the voter; and
- (b) the voter's voting entitlement; and
- (c) each of the rates proposed by the industry services body for the poll.

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18 Voting instructions

- (1) The voting instructions must include words to the effect that, to cast valid votes in the poll, an eligible voter must:
 - (a) mark the ballot-paper for the poll, by writing the number '1' in the square next to the rate that the voter most prefers from among the rates listed on the ballot-paper; and
 - (b) mark the ballot-paper in 1 of the following ways:
 - (i) if the industry services body proposes 3 rates of dairy service levy — by writing the number '2' or '3' in each of the squares next to the remaining rates in the order of the voter's preference for them;
 - (ii) if the industry services body proposes 4 rates of dairy service levy — by writing the number '2', '3' or '4' in each of the squares next to the remaining rates in the order of the voter's preference for them;
 - (iii) if the industry services body proposes 5 rates of dairy service levy — by writing the number '2', '3', '4' or '5' in each of the squares next to the remaining rates in the order of the voter's preference for them; and
 - (c) if the voter is voting by post:
 - (i) place the completed ballot-paper inside the reply-paid envelope; and
 - (ii) seal the envelope; and
 - (iii) send the envelope to the returning officer, so that it is received by the end of the return day; and
 - (d) if the voter is voting by fax, fax a copy of the ballot-paper to the specified fax number.
- (2) The voting instructions must also include words to the effect that:
 - (a) the numbers marked on a ballot-paper must be consecutive whole numbers; and
 - (b) each number must be used only once.
- (3) In addition, the voting instructions must state the return day.

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19 Information memorandum

The information memorandum must set out:

- (a) for each of the rates listed on the ballot-papers for the poll:
 - (i) the amount of funds the industry services body estimates it will receive under the funding contract if that rate is adopted by the Minister; and
 - (ii) how the industry services body proposes to spend those funds; and
- (b) the industry services body's recommended rate from among the rates listed on the ballot-papers; and
- (c) the reasons for the industry services body's recommendation; and
- (d) any other information that the industry services body considers appropriate.

20 Minister to approve ballot-paper etc

- (1) Before the ballot-paper, voting instructions and information memorandum for a poll may be used, the Minister must approve them.
- (2) At least 1 calendar month before the cut-off day for the poll, the industry services body must submit the following documents it proposes for the poll to the Minister for approval:
 - (a) the ballot-paper;
 - (b) the voting instructions;
 - (c) the information memorandum.
- (3) The Minister may approve the documents only if the Minister is satisfied that:
 - (a) they meet the requirements set out in regulations 17, 18 and 19; and
 - (b) before finalising the documents, the industry services body consulted representatives of the entities that will be, or are likely to be, eligible to vote in the poll in relation to the documents.

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Division 3.5 Voting in polls

21 Voting

To cast valid votes in a poll, an eligible voter must:

- (a) mark the ballot-paper received by the voter, in accordance with the voting instructions; and
- (b) send the ballot-paper to the returning officer, so that it is received by the end of the return day (but see paragraph 22 (1) (b)).

22 Faxed ballot-papers

- (1) Paragraph 21 (b) may be satisfied by sending a faxed copy of the ballot-paper to the returning officer, if:
 - (a) the ballot-paper clearly identifies the eligible voter to which it was issued; and
 - (b) all pages of the faxed copy of the ballot-paper are received by the returning officer by the end of the return day.
- (2) If the returning officer receives 2 or more faxed copies of the same ballot-paper, the returning officer must disregard all copies except the copy that is first received.
- (3) However, if, by the return date, the returning officer receives a faxed copy of a ballot-paper and the original ballot-paper, the returning officer must disregard the faxed copy.

Division 3.6 Counting the votes

23 Appointment of returning officers

- (1) The industry services body must appoint, for each poll, an individual with relevant expertise to be the returning officer for the poll.
- (2) The industry services body may appoint assistant returning officers for each poll.

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- (3) The industry services body must not appoint as the returning officer or an assistant returning officer for a poll, an individual who is:
 - (a) an employee of the industry services body; or
 - (b) an eligible voter; or
 - (c) an associate of an eligible voter.
- (4) For paragraph (3) (c), an individual is an associate of an eligible voter if the individual is:
 - (a) a member of the eligible voter's family, if the eligible voter is an individual; or
 - (b) an employee of the eligible voter; or
 - (c) a director of an entity that is connected with the eligible voter or is an associate of the eligible voter (within the meaning of the *Corporations Act 2001*), if the eligible voter is a corporation; or
 - (d) a beneficiary under a trust administered by the eligible voter.

24 Dealing with ballot-papers

As soon as practicable after the end of the return day for a poll, the returning officer, or an assistant returning officer, must for each ballot-paper completed by an eligible voter and received by the returning officer by the end of the return day:

- (a) examine the ballot-paper to determine whether it has been marked in accordance with the voting instructions; and
- (b) if it has — check the Register of eligible voters to confirm the voter's voting entitlement.

25 Counting the valid votes

- (1) For each rate proposed in a poll, the returning officer must add the number of valid votes represented by ballot-papers on which a first preference is indicated for the rate.
- (2) If, after doing the addition, there is a majority of first preference votes for one rate, the returning officer must declare that rate to be the rate that must be recommended to the Minister under subsection 9 (2) of the Act.

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- (3) If, after doing the addition, there is not a majority of first preference votes for one rate, the returning officer must take the following steps:
- (a) the rate with the fewest first preference votes must be excluded, and each ballot-paper marked with a first-preference vote for that rate must be transferred to the rate indicated next in order of preference on the ballot-paper;
 - (b) the process of excluding the rate with the fewest votes, and transferring ballot-papers marked with a vote for that rate to the unexcluded rate indicated next in order of preference must be repeated (if necessary) until there is a majority of votes for one rate;
 - (c) the returning officer must declare the rate for which there is a majority of votes after the exclusion of other rates under this subregulation to be the rate that must be recommended to the Minister under subsection 9 (2) of the Act.
- (4) For subregulation (1), the number of valid votes represented by a ballot-paper is the same as the voting entitlement for the voter whose vote is recorded on the ballot-paper.
- (5) For paragraph (3) (b), a ballot-paper is marked with a vote for a rate if all rates for which the ballot-paper indicates higher preferences have been excluded from the count by a previous operation of paragraph (3) (a).
- (6) If, on any count:
- (a) there is an equal number of votes for 2 or more rates (***lowest ranking rates***); and
 - (b) one of them must be excluded;
- the rate to be excluded is the rate that the returning officer decides, by lot, is to be excluded.
- Note* Under regulation 6, the recommendation following a poll, to be made to the Minister in relation to the amount of the dairy service levy, must be accompanied by:
- (a) a summary of the results of the poll; and
 - (b) a statement as to how the recommendation is in accordance with the results of the poll.

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26 Preservation of ballot-papers

- (1) The returning officer must keep all of the ballot-papers, and any documents relating to the poll, in a secure place until the second anniversary of the return day for the poll.
- (2) The returning officer must destroy the ballot-papers and documents as soon as practicable after the anniversary.
- (3) However, subregulation (4) applies if:
 - (a) before the anniversary, a person makes an application for an order of review, in relation to the poll, under:
 - (i) section 5 of the *Administrative Decisions (Judicial Review) Act 1977*; or
 - (ii) section 39B of the *Judiciary Act 1903*; or
 - (iii) paragraph 75 (v) of the Constitution; and
 - (b) the applicant gives the returning officer notice of the application before the anniversary.
- (4) The returning officer must not destroy the ballot-papers and documents before the day when the application is finally determined, but must destroy the ballot-papers and documents as soon as practicable after that day.

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Part 4 Reconsideration and review of decisions

Division 4.1 Reconsideration of decisions

27 Application for reconsideration of determinations

- (1) If an eligible voter is sent a notice, under regulation 13, of a determination of the voter's voting entitlement, the voter may apply to the industry services body for reconsideration of its determination.
- (2) The application:
 - (a) must be in writing; and
 - (b) must state the reasons why the applicant seeks reconsideration of the determination; and
 - (c) must be received by the industry services body within 14 days after the day specified in the notice; and
 - (d) may be accompanied by documents supporting the applicant's application.

28 Reconsideration of determinations

- (1) If the industry services body receives an application for reconsideration made in accordance with regulation 27, the industry services body must consider the application and make a decision (a *reconsidered decision*), either:
 - (i) affirming its original determination under regulation 11; or
 - (ii) varying its original determination and stating the reconsidered voting entitlement.
- (2) Within 14 days after receiving the application, the industry services body must:
 - (a) send to the applicant a notice about the reconsidered decision; and

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- (b) if the industry services body has varied its original determination — update the Register of eligible voters to reflect the variation.
- (3) The notice must:
 - (a) state the reasons for the reconsidered decision; and
 - (b) state that, if the applicant is not satisfied with the decision, the applicant may apply to the Disputes Panel for the poll, for review of the decision on reconsideration.
 - (c) state that an application for review:
 - (i) must be in writing; and
 - (ii) must state the reasons why the applicant seeks review of the reconsidered decision; and
 - (iii) must be received by the Disputes Panel within 14 days after the day specified in the notice for the purposes of this subparagraph; and
 - (iv) may be accompanied by documents supporting the applicant's application.

Division 4.2 Review of decisions by Disputes Panel

Subdivision 4.2.1 Disputes Panel

29 Disputes Panel

- (1) Within 14 days after the cut-off day for a poll, the industry services body must establish a panel for the poll.
- (2) The panel is to be known as the Disputes Panel for the poll.
- (3) The functions of the Disputes Panel are:
 - (a) to receive and consider applications for review of reconsidered decisions made by the industry services body under regulation 28; and
 - (b) for each application — to finally determine the applicant's voting entitlement for the poll.
- (4) The Disputes Panel must have at least 3 members.

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- (5) The industry services body must not appoint to the Disputes Panel for a poll, an individual who is:
- (a) an employee of the industry services body; or
 - (b) an eligible voter; or
 - (c) an associate of an eligible voter; or
 - (d) the returning officer or assistant returning officer for the poll.
- (6) For paragraph (5) (c), an individual is an associate of an eligible voter if the individual is:
- (a) a member of the eligible voter's family, if the eligible voter is an individual; or
 - (b) an employee of the eligible voter; or
 - (c) a director of an entity that is connected with the eligible voter or is an associate of the eligible voter (within the meaning of the *Corporations Act 2001*), if the eligible voter is a corporation; or
 - (d) a beneficiary under a trust administered by the eligible voter.

30 Consulting before appointing Panel members

Before the industry services body appoints an individual to be a member of the Disputes Panel for the poll, the industry services body must consult representatives of the entities that will be, or are likely to be, eligible to vote in the poll, about its proposal to appoint the individual to the Panel.

Subdivision 4.2.2 Review of reconsidered decisions

31 Application for review of reconsidered decisions

- (1) If an eligible voter receives a notice under paragraph 28 (2) (a), the voter may apply to the Disputes Panel for review of the industry services body's reconsidered decision.
- (2) The application:
- (a) must be in writing; and

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- (b) must state the reasons why the applicant seeks review of the reconsidered decision; and
- (c) must be received by the Disputes Panel within 14 days after the day specified in the notice; and
- (d) may be accompanied by documents supporting the applicant's application.

32 Review of reconsidered decisions

- (1) If the Disputes Panel for a poll receives an application made in accordance with regulation 31, the Panel must consider the application and make a decision either:
 - (a) affirming the decision made on reconsideration; or
 - (b) varying that decision and stating the reconsidered voting entitlement.
- (2) Within 14 days after receiving the application, the Disputes Panel must:
 - (a) send to the applicant a notice about the decision on review; and
 - (b) send to the industry services body a copy of the notice sent to the applicant.
- (3) The notice must state the reasons for the Disputes Panel's decision.

Note If the industry services body becomes aware that the information recorded on the Register of eligible voters is not current, it must update the Register as soon as practicable but before the return day — see subregulation 14 (4).

Note

- 1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.frli.gov.au.